

Introduction

Rights of Colored Men: Debating Citizenship in Antebellum America

The title of William Yates's 1838 treatise, *Rights of Colored Men*, aptly captures the subject of this book. The nineteenth-century Americans for whom Yates wrote were fascinated by a juridical puzzle: Not slaves nor aliens nor the equals of free white men, who were former slaves and their descendants before the law?

None were more interested in this question than black Americans themselves, and *Birthright Citizens* takes up their point of view to tell the history of race and rights in the antebellum United States. The pressures brought on by so-called black laws and colonization schemes, especially a radical strain, explain why free people of color feared their forced removal from the United States. In response, they claimed an unassailable belonging, one grounded in birthright citizenship. No legal text expressly provided for such, but their ideas anticipated the terms of the Fourteenth Amendment. Set in Baltimore, a place between North, South, and the Atlantic world, this book traces the scenes and the debates through which black Americans developed ideas about citizenship and claims to the rights that citizens enjoyed. Along the way they engaged with legislators, judges, and law's everyday administrators. From the local courthouse to the chambers of high courts, the rights of colored men came to define citizenship for the nation as a whole.

Yates authored the very first legal treatise on the rights of free black Americans.¹ It was 1838 when *Rights of Colored Men to Suffrage, Citizenship, and Trial by Jury* was published in Philadelphia.² He was not one of antebellum America's highly regarded legal minds. Some say he read law for a time, although there is no evidence he was admitted to the bar. Instead, Yates's career began with a short-lived stint as a newspaper publisher in his hometown of Troy, New York.³ His bona fides on the subject of race and citizenship were best established during his years as an agent for the American Anti-Slavery Society.⁴ While many abolitionists maintained a self-conscious distance from

RIGHTS OF COLORED MEN

TO

SUFFRAGE, CITIZENSHIP AND TRIAL BY JURY:

BEING

A BOOK OF FACTS, ARGUMENTS AND AUTHORITIES, HISTORICAL
NOTICES AND SKETCHES OF DEBATES—WITH NOTES.

BY WILLIAM YATES.

PHILADELPHIA:
PRINTED BY MERRIHEW AND GUNN,
No. 7 Carter's Alley.
.....
1838.

FIGURE 1.1 William Yates, *Rights of Colored Men*. American Anti-Slavery Society agent William Yates made a case for the status of black Americans as citizens, consolidating arguments made in conventions, legislatures, and courtrooms. The result, *Rights of Colored Men*, was the first legal treatise on the subject. Image courtesy of the William L. Clements Library.

free black communities, Yates centered his work there.⁵ The oppression of free people of color was a companion to slavery, in Yates's view, with antislavery work necessarily extending into questions of free people's status.⁶ Penning *Rights of Colored Men* was the pinnacle of this mission.

Yates placed a powerful instrument of authority in the hands of free African Americans and their allies. The antebellum legal treatise was a key tool in the standardization and dissemination of legal knowledge and was typically devoted to the comprehensive synthesis of a single branch of law.⁷ By the late 1830s, Yates was following on the success of James Kent's *Commentaries* and Joseph Story's treatise series.⁸ The genre had come to be associated with the concepts of law as scientific knowledge, legal education as systematic, and the profession as respectable.⁹ Yates successfully adopted legal culture's own tool to such a degree that readers from the nineteenth century until today have regarded him as an authority on free black legal status. But Yates's text was also a work of advocacy.¹⁰ *Rights of Colored Men* received prominent notices in the black and abolitionist press and could be purchased at local antislavery society offices.¹¹ As a result, the work served as a probing legal treatise that fueled activist arguments.¹²

Yates provides a window onto the position that some activists – black and white – took on race and citizenship at the end of the 1830s. Law was an instrument of change, and Yates forthrightly explained his objective: to undermine prejudice against color. Racism had led to “legal disability”: exclusion from militia service, naturalization, suffrage, public schooling, ownership of real property, office holding, and courtroom testimony. Yates was especially unsettled by the disfranchisement of free black men in New Jersey, New York, Connecticut, and, more recently, Pennsylvania. Assembling evidence from legal culture, he believed, would help establish the rights and citizenship of free black people.¹³

Yates began with a story of the nation's origins. The establishment of the United States, he said, had been at the outset a revolutionary, republican, and enlightened undertaking that was untainted by racism or distinctions among and between races. This had been possible in the wake of the American Revolution because the founding generation knew firsthand the contributions black people had made to independence, through military service and labor. American law had originally been color-blind, as evidenced by the absence of racial distinctions in founding documents, such as the federal and state constitutions.¹⁴

Change came in the early nineteenth century, at the fault line between generations. A forgetting occurred, Yates posited. Lawmakers of the early republic did not know how black people had contributed to the nation's founding and hence were entitled to the privileges and immunities of citizens. In this sense, Yates's aim was partly to restore that past to the nation's political and legal memory. To achieve this, he compiled a history of lawmakers and their deliberations in which he found the development of antiblack prejudice

in courts, constitutional conventions, and legislatures. He followed the professional lives of men whose work included roles from low-level administrator to convention delegate and judge. Their ideas about free black people moved with them.

Most powerful was Yates's argument about how law, though suffering from amnesia, could be made right. The same instruments that had woven racism into the nation's legal fabric – courts, conventions, and legislatures – could now be used to recraft it. Legal culture was also capable of reform, of itself and of the status of black Americans. With the restoration of revolutionary-era memories would come the reestablishment of racial equality. Lawmakers needed only to recall the past to restore racial justice, and Yates's treatise aimed to be an agent of that remembering.¹⁵

Looking back, it is easy to conclude that Yates's ideas were naïve. His faith in the power of historical knowledge, on the one hand, and the malleability of antiblack racism, on the other, seems like a misreading, given what we know of the rise of anti-free Negro thought and legislation in the 1840s and 1850s. But from Yates's point of view in 1838, he had prominent lawmakers who were sympathetic to his view. He built his arguments on the published opinions of judges, legislators, and constitutional framers who also advocated that free black Americans had rights. Yates amplified their ideas, giving them visibility and volume, all the while hoping he might help convert others to an affirmative position on black citizenship.¹⁶

Yates made a bold claim: Free black Americans could not be removed – banished, excluded, or colonized – from the borders of the individual states or the United States. With this he confronted head on the thorniest legal question of the antebellum period: Were free African Americans citizens with a claim to place? His answer was yes. Citizenship, he wrote, was distinct from political rights. It “strikes deeper” than, for example, the right to vote.¹⁷ Denied the status of citizens, free black people were not secure in their “life, liberty, and property,” or what he termed “personal rights.”¹⁸ At its core, citizenship was a claim to place, to enter and remain within the nation's borders. Citizenship, Yates believed, would protect free black people from expulsion.¹⁹

Yates adopted his most authoritative tone when discussing citizenship. The sections of his treatise on the vote and jury service leaned heavily on the published words of lawmakers. His discussion of citizenship was original, a structured synthesis that brought together a close reading of the Constitution with congressional debates and learned commentary. He began with four broad principles. First, no authority countered the view that free people of color were citizens, as contemplated by article 4, section 2, clause 1 of the Constitution. They were thus entitled to the “privileges and immunities of citizens.” Nothing in the common law of England, the principles of the British constitution, or the Declaration of Independence recognized a distinction of color. Second, public-law jurisprudence recognized two classifications of persons: citizens and aliens. All those born within a jurisdiction were citizens

with an allegiance to the state that demanded both obedience and protection. Third, to be deprived of the vote did not mark one as a noncitizen; nonpropertied men, women, and children were citizens even though in some jurisdictions ineligible to vote. Fourth and finally, Yates rejected any analogy between the status of free black people and that of Indians or slaves. The legal position of Indians was murky, though largely, he thought, governed by treaty and related law. Slaves were property and categorically not citizens.²⁰

Yates provided case studies. Congress's 1820 debate over Missouri's admission to the union had turned in part on whether the new state could bar free black people from entering the state without violating the United States Constitution's guarantee of privileges and immunities. Then Major-General Andrew Jackson's proclamations to the "free colored inhabitants of Louisiana" during the War of 1812 which implied that soldiers of color were citizens like their "white fellow-citizens." In the example of Prudence Crandall, whose Connecticut school was said to have operated in violation of the state's black laws by admitting children of color from outside the state, the citizenship of free persons of color had been a "turning hinge." Crandall's attorneys argued that such a distinction denied free black children, as citizens, their guaranteed privileges and immunities.²¹

Rights of Colored Men remained an influential text throughout the antebellum years.²² Other antislavery and African American activists would come to publish their own arguments about free black men and women as citizens. But few would adopt a form more cloaked in legal authority than that of the treatise. Yates's text fueled understandings of the role that law might play in claims for free black rights. It was also an example of how formal law-making by white men was connected to the vernacular legal culture of free black communities. Yates made a record that suggests how close to agreement highly placed lawmakers and free African American activists could be in their thinking.²³

Yates and his treatise were forgotten after the Civil War, as was the threat of removal that so concerned him. The Civil Rights Act of 1866 and then the Fourteenth Amendment made clear that those who were US-born were citizens, whether they were formerly free or formerly enslaved. Persons born in the United States were citizens of the United States and of the individual state in which they resided.²⁴ The Civil Rights Act underscored that birthright was independent of "race, color, or previous condition of slavery or involuntary servitude."²⁵ It was a momentous turn of events by every measure. Birthright citizenship, a principle that African Americans had long argued was embedded in the Constitution, was affirmed. Yates's treatise survived but only in a literal sense, as a bound text tucked away on shelves that lined parlors and libraries.²⁶

One century later, Yates and *Rights of Colored Men* were rediscovered. In the modern civil rights era, Yates's treatise took on renewed relevance as the United States again confronted the dilemma of African American citizenship. Nineteenth-century ideas served as evidence of an origins story about how

the black freedom struggle had begun in the decades before the Civil War. Historians of race and rights dusted off the past of early African American and antislavery activism. They found William Yates.

Charles Wesley was the first historian to recover Yates. Wesley was a prolific scholar, a minister in the African Methodist Episcopal (AME) Church, and leader of the Association for the Study of Negro Life and History (ASNLH), known today the Association for the Study of African-American Life and History, or ASALH. Wesley was trained at Fisk and Yale, and received his PhD from Harvard in 1925. His scholarly energy was nearly boundless, and he published more than twenty books and many more articles, including survey-style works on black history. Wesley's subject matter was sweeping, from labor to the Civil War, citizenship, and Reconstruction. Within the ASNLH, Wesley served as director of research and publications, president, and executive director.²⁷

Wesley set out to document how black thinkers had forged a long tradition of historical writing. The occasion was the 1963 ASNLH presidential address. The practice, Wesley explained, had been "associated with the building of nationalism and group pride." His starting point was comparative. Irish and Jewish people, like black Americans, had turned to historical writing to provide facts and combat oppression. Wesley's "Creating and Maintaining an Historical Tradition" was a call to arms that urged ASNLH members to pursue historical scholarship and teaching with political commitment and insight. Wesley placed historical writing during the civil rights era on a continuum that dated back to the earliest decades of the nineteenth century. To write history in the 1960s was, for Wesley, to continue that critical work.²⁸

Wesley turned to some of the first works by black historians to make his case. Their earliest efforts had not been academic, at least not by twentieth-century standards. Black history had been told, in Wesley's view, before the publication of tracts and texts. African American orators were the first historians. Addresses delivered by men such as William Hamilton, Alexander Crummell, and Henry Highland Garnet "were evidence of the beginnings of the creation of an heroic tradition for Negro-Americans." A written tradition by "Negro Americans" then emerged, with writers including Robert B. Lewis, author of *Light and Truth* (1836); James W. C. Pennington, author of the *Text Book of the Origin and History of the Colored People* (1841); William Cooper Nell, author of *Services of Colored Americans, in the Wars of 1776 and 1812* (1851); and William Wells Brown, author of *The Black Man: His Antecedents, His Genius, and His Achievements* (1863) at the fore.²⁹ The first of these "Negro Historians" to be singled out by Wesley was William Yates, author of *Rights of Colored Men*. Yates had been a pioneering black historian.

Other historians also took notice of Yates, though they did not see him as Wesley had. John Myers included Yates in his study of American Anti-Slavery Society agents and their attention to the circumstances of free African Americans. Myers explained how the society had been generally ambivalent

about working with free people in the North. However, by the mid-1830s a small cadre of agents was assigned that task, William Yates among them. Myers's larger aim was to demonstrate this change in terms of antislavery activism.³⁰

Yates was, Myers explained, "first secretary of the Troy Anti-Slavery Society," representing that organization at national anniversaries in 1835 and 1836, and secretary and nominating committee member of the New York State Anti-Slavery Society. Myers documented how men such as Yates worked: They "gained the confidence of the colored people of Troy and were acceptable as agents to the Negro leaders of the country." Myers did not directly address the matter of Yates's racial identity, and assumed that he had been a white man who worked closely with black Americans.³¹

Had Yates been black or white? As other historians varyingly relied on Wesley and Myers, confusion resulted. In some cases, it appeared not to matter. Yates's identity was no more than an embellishment. For example, when historian Harold Hancock published Yates's "Letter of 1837," a report about free black people in Delaware, he explained:

William Yates of Troy, New York, was a Negro minister who was one of two persons employed by the American Anti-Slavery Society in the fall of 1836 to assist Negroes in the larger towns east of the Appalachian Mountains. His headquarters were near New York City. In the middle of June 1837, he attended two conventions in Philadelphia and took the opportunity to visit a slave state, Delaware, for the first time. Most of his 18-month appointment was spent in gathering data for the *Rights of Colored Men*.³²

Hancock appears to have read both Wesley and Myers and then developed a composite biography that wedded Wesley's view of Yates as black with Myers's explanation of his work as an antislavery agent. Could both be correct?

There was only one author of *Rights of Colored Men*, though the confusion is understandable. The evidence gleaned from early American Anti-Slavery Society reports supports Myers's conclusion that Yates was a white abolitionist, a memorable one for his having worked with black people in the North.³³ Indeed, the mix-up about Yates's identity stems in part from his participation in black political and religious gatherings, and his faithful reportage on those meetings for the black press. Black commentators admired Yates and promoted his treatise.³⁴ For example, when in October 1838 Yates attended a meeting of the New York Association for the Political Elevation and Improvement of the People of Color, he spoke from his book on "the legal disabilities of the colored man." But Yates was not a delegate.³⁵ Never in the writings of Yates does the pronoun usage shift – for example, from "them" and "theirs" to "us" and "ours" – in a way that would include Yates among black Americans.³⁶ Wesley's misapprehension of this unusual antislavery agent is understandable, but Myers was correct.

I was destined to return to *Rights of Colored Men* in researching this book. It is a singular text: the only nineteenth-century treatise devoted exclusively

to the status of free African Americans. As I began my research, I dug deeper into Yates's story and initially found little more than Myers had a half century earlier. Yates first appears in 1831, founding an upstate New York newspaper, the *Troy Press*.³⁷ He was an antislavery agent in 1833 and can be found among the delegates to many local and national conventions.³⁸ Yates conducted research for his treatise, visiting libraries and black communities between 1835 and 1837.³⁹ With the publication of *Rights of Colored Men*, he became a familiar figure in African American religious and political gatherings.⁴⁰ And then Yates receded from public life.⁴¹

Poring over newspapers, I came upon the unexpected. There was William Yates in the pages of the black-edited San Francisco *Elevator*. A review of William Wells Brown's 1863 book, *The Black Man*, bore his name.⁴² This makes sense, I thought. Yates had migrated west and was still engaged with print culture and black politics. I read on, observing the review's wide-ranging familiarity with African American political culture. Yates critiqued Brown for examining too narrow a slice of black leadership. There, I thought, was a reflection of Yates's knowledge gained through years spent in free-black communities.

I continued my search with a working hypothesis in mind. Yates had migrated to California, as had many from the East after 1848. He had remained connected to black politics, and in that city he would have found many familiar figures – black activists who had settled in San Francisco and Sacramento from New York and Philadelphia.⁴³ Yates had maintained an active interest in the rights of free black people and, in his characteristic way, was so deeply involved that he even wrote for the black press. It was a good hypothesis. But it could not have been more wrong.

My error was rooted in a simple fact. There had been two men named William Yates. The Yates who penned the *Elevator* review and the one who authored *Rights of Colored Men* were not one and the same. Still, their stories had parallels. Both had been involved in antebellum black politics and devoted their public lives to securing the rights of free people of color. Still, they could have not been more different. William Yates, the treatise writer, had been a gentleman of some means, enough to sustain himself as a volunteer for the antislavery movement. His institutional home had been the American Anti-Slavery Society, in which black men were marginalized in the 1830s. And he had been white.

William Yates the reviewer for the *Elevator* was born a slave and had an equally important story to tell about the history of race and rights. From Virginia, Yates purchased his freedom, migrated to Washington, DC, and began working as a porter at the United States Supreme Court.⁴⁴ He had a legal education, the kind acquired through the negotiations that secured his liberty and through observing the goings-on in the nation's high court. Yates understood the law of slavery and of freedom. His labors earned him enough to secure the manumission of his wife, Emeline, and their three children.⁴⁵

In the early 1850s Yates had moved to San Francisco, where he became a public figure.⁴⁶

A columnist for the African American-owned news weekly the *Elevator*, writing under the pen name “Amigo,” Yates’s ideas circulated widely.⁴⁷ Yates led California’s black political conventions as a man “possessed of great natural strength and ability” whose reputation was so widespread that “during the last days of a legislative debate, a state assemblyman would rise to support the right of black testimony by mentioning the name of William Yates as a man whose testimony would be as valid as any man’s.”⁴⁸ The former slave made his mark on the very terrain that the treatise writer had once occupied: in newspapers and at black political conventions. He was also a man of action. Yates led a mid-1850s challenge against a state law that barred black testimony against the interests of white people. In 1865 he headed the black state convention’s committee on voting rights. His focus remained steadily fixed on the contours of black citizenship.

The discovery of a second William Yates is more than coincidence. It is an affirmation of the very premise of this book. Black Americans can serve as our guides through a history of race and rights. Never just objects of judicial, legislative, or antislavery thought, they are what drove lawmakers to refine their thinking about citizenship. On the necessity of debating birthright citizenship, black Americans forced the issue. Men like San Francisco’s William Yates wrote for newspapers, engaged in the vernacular study of law, debated in political conventions, and conducted themselves like rights-bearing individuals, all the while pressing for a radical redefinition of citizenship.

This study is indebted to happenstance and what I learned when the search for one William Yates led to the discovery of another. It was Yates the former slave who pointed me back to the free men and women of Baltimore, Maryland, where his ideas about race and rights went to the core of their struggles for belonging.

Legal historians have examined race and citizenship from three perspectives. Close reading of the antebellum era’s major treatises suggests that generally citizenship was not a major subject of legal commentary. To the degree the concept was relevant, it guaranteed few rights or privileges, with neither voting rights nor property ownership, for example, dependent on citizenship.⁴⁹ When examining high court decisions, historians have relied on the 1857 case of *Scott v. Sandford* to explain the legal status of black Americans. This view defers to the opinion of Chief Justice Roger Taney, who held that no African American, enslaved or free, was a citizen of the United States.⁵⁰ Still others have looked for the origins of African American citizenship in the era of Reconstruction, with the ratification of the Fourteenth Amendment’s birthright citizenship provision. This view credits federal officials and Congress members with having devised and set in place the principle of *jus soli* in American law.⁵¹

Birthright Citizens confronts high court opinions and legislative edicts with the ideas of former slaves and their descendants.⁵² They too were students of

law, though of a less orthodox sort, gleaned ideas from the world around them. Their ideas about the terms of national belonging were expressed in newspapers and political conventions.⁵³ Their actions – petitioning, litigating, and actions in the streets – are a record of how people with limited access to legal authority won rights by acting like rights-bearing people. They secured citizenship by comporting themselves like citizens.⁵⁴ They developed legal consciousness – an understanding of their lives through law – and sought badges of citizenship.⁵⁵ This is not, however, a story of unbridled agency in a triumphalist sense.⁵⁶ Inhabiting rights and comporting themselves like citizens only sometimes secured justice.⁵⁷ Just as often, just ends remained elusive.

From shardlike courthouse records – dockets, minute books, and case files – this study pieces together the **everyday ways** in which African Americans approached rights and citizenship. Traces in the court archive do not speak for themselves, and rarely do they include narrative. To get these documents to speak requires building individual stories with particularity. The result is a history, told through a series of disruptive vignettes, that suggests how people without rights still exercised them. Quotidian courthouse appearances resonate with debates in legislatures, high courts, and political conventions. New characters in the history of race and rights – black Americans whose stories had long been buried in unopened leather books and case files tied up with red string – are linked to those of better-remembered figures – lawyers, judges, and legislators.

This approach is interesting for what it leaves out as well as for what it includes. Its grounding in the perspective of antebellum America's black activists gives *Birthright Citizens* a selective and sometimes partial view of the era's citizenship debate. A few dimensions of that debate, surely relevant to some lawmakers in the nineteenth century and of note for historians today, did not figure importantly in how African Americans understood citizenship. An important example is the federal circuit court decision of 1823 by Justice Bushrod Washington in *Corfield v. Coryell*.⁵⁸ Washington's explanation of the Constitution's privileges and immunities clause is said to have influenced Reconstruction-era rethinking on citizenship. Today, legal scholars regard *Corfield* as an early and essential touchstone for arbitrating the rights of citizens. Still, there is no evidence that *Corfield* influenced the thinking about free African Americans in Baltimore or elsewhere. Later deemed influential, *Corfield* is outside the scope of this book.

This study also departs from those before it by looking for the history of law in debate and conflict, rather than in a positivistic interpretation of texts.⁵⁹ Those who read *Birthright Citizens* looking for a new answer to an old question – Were black Americans citizens? – will find the answer is yes and no. Sometimes citizenship was defined in constitutions and statutes, although most of the time it was not. Courts disagreed and even changed their minds over who was a citizen and what rights might attach to that status. Commentators and treatise writers were never in accord and amended their writings to reflect

changed thinking. The only consensus that emerges is one about the importance of fixing the status of free black people. Whether for or against designating them as citizens, there was widespread agreement about the need to situate former slaves in the nation's legal regime. Beyond that, this is a story of how lawmakers and jurists fumbled, punted, confused, and otherwise failed to settle the question. Free black activists were generally of one mind. But even if they agreed that they were citizens, they did not agree about whether the state might **affirm that fact**. Faced with uncertainty, some fled for Northern cities, Liberia, or Canada. Many more stayed put.

Other studies have examined African American rights during the antebellum period, although few have expressly linked rights to citizenship as this book does.⁶⁰ For the historian this is a thorny matter, foremost because not all antebellum Americans saw the relationship between rights and citizenship in the same way. For some, being a citizen was the gateway to rights. Citizenship was a prerequisite to the right to vote. For others, exercising rights was evidence of citizenship. If a person exercised the right to vote, it was evidence that he was a citizen. Often no relationship between rights and citizenship was articulated, leaving these as separate notions under law. Texts are of little help with this puzzle. In the absence of positive law – such as the later Civil Rights Act of 1866 – the equation linking rights and citizenship was never fixed. Black Americans' efforts were aimed at securing rights that evidenced their citizenship. Still, when rights were denied them, free people of color inverted the argument: citizenship was said to be a gateway to rights.

"Rights" as used here refers to a process by which black Americans imagined, claimed, and enacted their relationship to law. Political theorist Bonnie Honig characterizes the assumption of rights and privileges by outsider subjects as a quintessentially democratic practice. Fundamental to democracy are the ways in which those said to be without rights make claims and "room for themselves." Although Honig's case is that of aliens, or noncitizens, her approach serves well a search for meaning in the rights claims of free people of color. Their rights making was messy, contested, and sometimes violent. How else, Honig asks, would those on the outside challenge the imbalance of power that framed such dynamics? Well before any judicial or legislative consensus granted their rights, free black men and women seized them, often in everyday claims that set them on a par with other rights-bearing persons.⁶¹ Only later did those rights become enshrined in text. In antebellum America, rights holders were those who did what rights holders did.⁶²

This process of making rights was linked, for black Americans, to a broad claim to the **"privileges and immunities of citizenship."** Rights, like citizenship, were not self-evident in antebellum America. What were the rights of citizens? One answer comes out of a study of high court doctrine. The Supreme Court before the Civil War, for example, was slowly developing a right to interstate travel.⁶³ Another answer lies in the nascent terms of foundational texts. Can we say, for example, that there was a right to the free exercise of religion

before *Reynolds v. United States* was decided in 1878?⁶⁴ Another touchstone is the Civil Rights Act of 1866, the nation's first articulation of civil rights: "To make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property." These textual expressions of rights existed alongside a view of rights as secured through their performance. Free African Americans became rights holders when they managed to exercise those privileges that rights holders exercised. And often they did so in ways that local authorities were bound to respect and enforce. They traveled between the states, they gathered in religious assemblies, they sued and were sued, testified, and secured their persons and property before the law. Their routes to doing so were sometimes circuitous, and they would need to reestablish such rights over and again. Still, the rights they inhabited became the rights they held. Sometimes they even appeared to be like citizens.

Citizenship had a piecemeal quality in antebellum America, defined only as needed. Who was a citizen? White aliens could become naturalized citizens. But what of those who declared their intention to naturalize before state courts? Were they aliens, citizens, or persons somewhere in between? The president was required to be a "natural born" citizen. Did this imply that others might be citizens by virtue of birth as well? White women and children were said to be citizens, though most agreed that their rights should be determined as much by age or sex as by their status. Paupers, the infirm, the feeble, and the insane represented a litany of conditions that functioned to compromise access to rights for those otherwise deemed citizens. From time to time, free people of color even held in hand affirmations of their citizenship. Black sailors, patent holders, and passport bearers carried such documents.

Place matters for any telling of race and citizenship. *Birthright Citizens* is set in Baltimore, where the specifics of region, political economy, and jurisdiction were critical to how law was constructed at the intersection of formal edicts and lived experience. This study's approach to the history of law reflects insights gained from the many social histories of free African Americans that center on city- or countywide communities.⁶⁵ Legal historians have adopted a similar frame, one that is guided by jurisdiction as a manifestation of the local.⁶⁶ The authority that a locally grounded study cedes in terms of breadth, it gains many times over in depth and complexity. To burrow into the dynamics of a local legal culture is to open a window onto how ordinary people interpreted law, the important role of legal administrators, and the perspectives of everyday litigants. Local legal culture is an essential dimension of this story.

Baltimore may vie with Philadelphia and New Orleans for supremacy when it comes to studying free people of color. But for a study of race and citizenship, no city better lends itself to understanding this fraught intersection. Baltimore was the nation's third largest city, situated on what historians have termed the middle ground, between North and South.⁶⁷ Maryland was a slaveholding

state with southern and eastern regions that relied on bound labor for staple-crop production. Yet Baltimore was more strongly linked to regions to the north where grain production was in the hands of free labor. The city sat closer to Philadelphia than to Richmond. Critically for this study, Baltimore was home to the nation's largest free black community: some 25,000 residents, who built a robust public culture. By the 1830s Baltimore was in the throes of what historian Steven Hahn suggests was a century-long process of abolition and emancipation in the United States.⁶⁸ The city was a cosmopolitan port, influenced by the influx of mariners and the news they carried. At the same time, it was a locality grappling with the questions posed by the shift toward a postslavery society. The city's legal culture was sophisticated, autonomous, and claimed the era's most celebrated jurist, Roger Taney, as one of its own. In nearly all his years on the Supreme Court, Taney lived in Baltimore, hearing cases in the city's federal court and presiding over bar proceedings. Taney knew Baltimore's streets, alleys, and free African Americans. His decision in *Dred Scott* reflected the tensions that free African Americans generated in Baltimore.

Baltimore's local courthouse was a main stage, the crucible in which many thousands of black Baltimoreans came to know something about race and law. It was the space in which free African Americans confronted the state.⁶⁹ Through quotidian civil proceedings, they entered legal culture, learned its rules and rituals, and secured allies. There they confronted lawyers, judges, clerks, adversaries, and a curious public. Often their cases were said to be of little note. But on closer examination, as they filled the court's dockets, black claimants pressed the question of their own status. Underlying their brief appearances were questions about fundamental rights and privileges. Often these were muted in the interest of expedient and efficient administration. Nevertheless, the halls of the Baltimore courthouse echoed with questions about African American citizenship.

Chapters 1 through 4 examine the development of legal consciousness among black Baltimoreans. Without access to formal training, activists nonetheless studied law. Their primers were African American and antislavery newspapers and their classrooms, lawyers' offices, ships at sea, and political conventions. Their questions were about rights and citizenship. Neither slaves nor the equals of free white men, free people of color pondered how to combat African colonization schemes and black laws. Most urgent was a radical strain of colonization that surfaced in Maryland, one that threatened their forced removal. They used rights claims and birthright citizenship to counter their opponents. But as Baltimore became increasingly distanced from New York and Philadelphia, activists turned to local avenues of redress and discovered the courthouse.

Chapters 5 through 7 explore what happened when black Baltimoreans turned to the local courthouse. There, they carried themselves like rights-bearing citizens. Disputes over church property and leadership brought hundreds of the city's black Baptists and Methodists into the local courthouse.

Their gatherings were one manifestation of a right to public assembly, and ownership of church property led them to sue and be sued. These same men and women inverted the intention of the black laws. Oppressive permit and license requirements were opportunities to make lawyers and judges party to an exercise of the rights to travel and to own firearms. As participants in the city's associational economy, free people of color were woven into networks of debt and credit, and when they failed financially, petitions for insolvency were a route to extinguishing their obligations. The same proceedings stretched the limits of their rights: black men testified against the interests of whites and served as court-appointed trustees, roles that custom suggested they should not occupy. Families and friends sought court intervention to protect the interest of young apprentices. Family autonomy was at stake, and the writ of habeas corpus proved to be a powerful tool for bringing white indenture holders before a judge. Often the results were not what petitioners aimed for, but they filed claims, served as witnesses, and subjected to the rule of law schemes that threatened to operate much like enslavement.

Chapter 8 examines the era of *Scott v. Sandford*. Rather than a starting place, that notorious case was but a late volley in the antebellum story of race and rights. In Baltimore, the case was in one sense much anticipated, with local legal greats like Roger Taney and Reverdy Johnson playing important roles. Even as newspapers promoted the decision's significance, underscoring the holding that no black person was a citizen of the United States, nothing changed in Baltimore. Black residents continued to exercise rights and conduct themselves like citizens in the state court venues that had long been the primary arbiters of such questions. State lawmakers continued to promote the forced removal of free African Americans – but their schemes failed. When Maryland's high court had the opportunity to adopt the reasoning of *Dred Scott*, it declined and instead affirmed that free people of color had the right to protect their persons and property before the law. In the state capitol, a legislative push proposed reenslavement or expulsion as a remedy for the “free negro problem.” It too failed after black men and women from Baltimore lobbied for its defeat.

Birthright Citizens concludes with a look at the early years of Reconstruction. For readers familiar with this later period, much of what precedes it will seem similar. Indeed, between 1820 and 1860, black Baltimoreans confronted the very questions that would take center stage during Reconstruction. Were they citizens, and if so, what rights flowed therefrom? As the Civil Rights Act of 1866 put it, “All persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States.” The claim to birthright citizenship was affirmed with a guarantee of civil rights. Free men and women of color likely recognized the claims they had already long been pressing. And they did not wait for Congress before seizing the opportunities presented by the new, postwar climate. They moved about, reuniting their families, they organized armed militias, and they

lobbied for desegregated public schools. In the courthouse, they returned to challenge apprenticeship contracts and won the declaration that they were unconstitutional.

No work of history is a blueprint for the present, and too much has changed between the nineteenth and the twenty-first centuries to permit us to prescribe remedies for today based on lessons from the past. Still, the case of free people of color and their struggle for belonging will read to some as a cautionary tale. And *Birthright Citizens* is guided by questions that are resonant in our present day. How, we might ask now, as Americans asked 200 years ago, should we regard those among us whose formal relationship to rights and citizenship remains unsettled and a recurring subject of political debate? What cost is there to be paid by a nation that permits people to work, create families, and build communities within its geopolitical borders, but then declines to extend them membership in the body politic? Even as we attempt to contain these questions by way of piecemeal legal texts, why are we surprised that individuals and their communities will reach for the brass ring of citizenship in a society that metes out rights and privileges by way of that construct? Free black Americans and their nineteenth-century trials make clear the pitfalls of the country's incapacity to sustain deliberations and arrive at resolutions. On the eve of the Civil War, nearly half a million people, the majority of them born in the United States, lived with their rights always subject to political whim and their belonging always subject to the threat of removal. We might say that they were not unlike today's unauthorized immigrants and their children, at least to the degree that free people of color then were also a community that lived through episodes of punitive legislation and efforts to force their exile. *Birthright Citizens* is their story.

Being a Native, and Free Born

Race and Rights in Baltimore

George Hackett's first lessons about race and rights were learned in his family's Baltimore home. The story of his father, Charles, suggests how much there was to know. Charles Hackett had come of age in the years after the American Revolution, just as Maryland law began to limit the political and economic lives of free men of color. Charles and others like him faced a narrow labor market.¹ He could work as a domestic or at sea, though neither was an easy choice for a man with a family. Charles was left to perform manual labor: cleaning privies, repairing roads, sinking pilings, leveling streets, and digging ditches.² Custom, laced with racism, generally excluded free black men from the skilled trades and professions that fueled the city's manufacturing economy. He faced recurring efforts to enact legislation that would have formally barred free men of color from more lucrative and less dangerous vocations.

It is unlikely, however, that Charles Hackett would have recounted his story as simply one of laboring in the city's lowest ranks. His work as an activist told another tale, one about how men and women of color taught themselves how to wrestle with questions of race and rights. His church leadership demanded a spiritual calling and scriptural expertise. It also required legal acumen, and Charles Hackett's earliest legal education came in the form of institution building. He was a lay leader in the African Methodist Episcopal Church, representing hundreds of black Methodists. His congregation was at the vanguard of a movement that rejected the marginalization of black worshipers in white-led Methodism. They had sought independence of thought, especially on slavery, and leadership roles, including ordination to the ministry. In the last years of the eighteenth century, Charles was among those establishing separate, black-led class meetings. His group purchased a lot and small building, naming it Bethel Church.³ Bethel's leaders purchased the freedom of their minister and hired him to operate Baltimore's first black-led school.⁴ In 1816, when black Methodists from Philadelphia, New York, and Baltimore launched

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FIGURE 1.1 Agents for *Freedom's Journal*. Black activists developed legal acumen through networks including the African American press. The first such publication, *Freedom's Journal*, was based in New York and employed a Baltimore-based agent, Charles Hackett, who also oversaw publishing for the African American Methodist Episcopal Church. Image courtesy of Martha S. Jones.

an independent denomination – the African Methodist Episcopal Church – Charles Hackett witnessed the culmination of his twenty-five years of religious activism.

Hackett also learned how to think about his community in legal terms. The incorporation of a church, the purchase of land and a building, and arranging for the manumission of an enslaved minister were tasks that offered lessons in law. These transactions demanded negotiations with attorneys, justices of the peace, and clerks. In this sense, law governed the life of Bethel Church. The church also made its own law, titled *The Doctrines and Discipline*, that governed the whole of the denomination and allowed local congregations to hold tribunals that would resolve internal disputes.⁵ Charles Hackett was key to this when, in 1820, he was elected the church's book steward. In that role, he visited Baltimore's black Methodists, explaining the importance of church law and raising funds for its publication.⁶

Informal exchanges about law – in church halls, on street corners, over meals, and during the work day – while difficult to recover with any specificity, must have been important. Charles Hackett was only semiliterate, if that. He signed legal documents with an X rather than his name, suggesting that he and others relied on those who could read to assist with interpretation of legal texts. Charles knew the power of literacy and made sure that his son George received the best education black Baltimore could provide. In helping to found the Bethel Church school, he would certainly have had his son and other children like him in mind. Even that work was informed by the parameters of law. Maryland never outlawed the education of free people of color. Still, enough slaveholding states did so that those setting up schools needed a keen sense of what might be permissible.⁷ Did the Hackett family talk about law during their regular gatherings? Some lessons were unavoidable. Home life, too, turned on the workings of legal culture. Charles Hackett acquired a small bit of property: a lot on Friendship Street. But by 1832 he faced a foreclosure suit brought by his mortgage holders. His family's economic life was made orderly, though neither stable nor secure, by way of law.⁸

African American print culture extended the legal education of black Baltimoreans like Charles Hackett. In his role as an agent for the nation's first African American newspaper, *Freedom's Journal*, Charles was responsible for connecting his city to an emerging network of free black communities. Published in New York City, the weekly's editors included Samuel Cornish, a Presbyterian minister who had been a missionary in Maryland before settling in Philadelphia and then New York.⁹ Perhaps he and Hackett met in Baltimore. It may have been that the two met in a political meeting. However they became acquainted, Hackett was among the first to represent Cornish's paper to the world, selling subscriptions and distributing newspapers in Baltimore.¹⁰ *Freedom's Journal* framed its mission and the struggles of black Americans in expressly legal terms: "We shall ever regard the constitution of the United States as our polar star." Cornish and Hackett brought news to the street

corners and parlors of black Baltimore, and with it came ideas about how law was one weapon in their arsenal.¹¹

In this chapter, we encounter black Baltimoreans as they developed a legal acumen that undergirded their claims to citizenship. Their first primer was the African American press, where they encountered examples of how the United States Constitution might be used to challenge local laws and thus take on meaning in their daily lives. They also looked to legislators, but there found a muddled scene that failed to fix the status of people of color.¹² In New York, for example, black people were citizens but with inferior voting rights. In Missouri, according to Congress, they could be regulated though not barred from the state. When a free sailor named Gilbert Horton was arrested in Washington, DC, and threatened with sale as a slave, black Baltimoreans were right to be alarmed. Horton was detained in the nation's capital under a Maryland law, and his liberty turned on the benevolence of white men in faraway New York City. Many insisted that Horton was a free citizen of New York and immune from sale. But in the streets and jails of Washington, as in Baltimore, free black people were especially vulnerable with legal authorities so divided.

Competing views about race and rights clashed in Baltimore. From the North came news about how states such as New York and Pennsylvania had implemented gradual emancipation schemes. There, free black men could sometimes vote. From the South, the fact of slavery's expansion was apparent, and a new domestic slave trade threatened the security of free black Baltimoreans. Still other perspectives on the life of free people of color entered by way of the port. Men and women connected to the maritime trades knew of how race and rights intersected in the Caribbean and South America. Throughout the Americas, free black men and women confronted dynamic and uncertain futures. Sailors and draymen related tales of rebellion and liberty in far-flung locales where slaveholding was reluctantly giving way to free soil. Making comparisons between Baltimore and other cities became yet another way to understand life and law in Baltimore.

Maryland's complex character, reflecting North and South, was forged through commerce, finance, trade, and shipbuilding.¹³ The city was also a global port with ties to the Caribbean and the South Atlantic. Aboard ships of far-flung origins came goods, news, and thousands of mariners. Free people of color knew these dynamics well. Their churches and political organizations tied them to the North. Slavery linked them to the South. And their labor – as seamen, dockworkers, boardinghouse keepers, and carters – ensured that they knew well the talk in the port. Baltimore was the third largest city in the United States, and more so than in any other, it was a city that was sustained by a many-faceted economy of exchange with the Americas.¹⁴

Ties of water, steel, and paper shaped the city. Canals connected it with Washington, DC, in one direction, and Pennsylvania's Susquehanna Valley in another. Turnpikes carried stages, wagons, and buggies through Baltimore via the National Road and seven additional turnpikes constructed

between 1798 and 1816 that linked Baltimore to the West. By the 1820s, railroad projects – the Baltimore and Susquehanna, the Baltimore and Washington, and the Baltimore and Ohio – were revolutionizing the city, the exchange and export of goods, and the in- and out-migrations of people.¹⁵ Law was a partner to the development of the city's character. The example of how joint stock companies emerged illustrates how the city was increasingly linked to other regions. Between 1787 and 1815, Baltimore became home to ten insurance companies (five for marine risks), seven turnpike companies, two bridge companies, and a water company, along with three manufacturing companies.¹⁶ Print culture was also key. Hezekiah Niles's weekly news magazine, *Niles' Register*, published in Baltimore, was the country's paper of record. The Quaker abolitionist Benjamin Lundy chose Baltimore as his base when he began publishing the *Genius of Universal Emancipation*. There, a young journalist and antislavery convert, William Lloyd Garrison, would join him in 1829.¹⁷

By 1800, Baltimore's connections to the Caribbean and South America were nearly two centuries old. Some links were wrought from the trade in goods. Maryland merchants exported staple crops – food, household wares, and manufactured items – to the British, Spanish, and French empires, and Maryland tobacco was packed and loaded for Caribbean destinations. Baltimore was known as the “granary of the West Indies,” as staples produced in northern Maryland and southern Pennsylvania were shipped to Caribbean markets. In addition, ships built in Baltimore, especially the much-admired Baltimore Clipper, took the city's name, along with its artisanship, manufacturing, and mariners, throughout the hemisphere.¹⁸

For free black households, links to the North were reinforced through a rich African American public culture of churches, fraternal orders, and newspapers. No connection was stronger than that established by the founding of African American churches. Black Christians in Baltimore were part of a rich and growing religious culture that was bound together by doctrine and worship styles as well as revivals and conventions. Black Baltimoreans also relied on the circulation of newspapers and tracts. Antislavery newspapers and, by 1827, the African American press knit free blacks in Baltimore together with communities in New York, Boston, Newport, and Philadelphia. *Freedom's Journal* included regular reports about happenings in Baltimore. News of colonization-society activities and the kidnappings of free black Marylanders thus reached black readers throughout the North.¹⁹ *Freedom's Journal* was also an outlet for local news. For example, the head of Baltimore's Sharp Street Methodist school, William Lively, advertised for black students in its pages.²⁰

Cities like Philadelphia and New York were touchstones for free black Baltimoreans. Like enclaves in the Maryland city, Northern black communities had grown up out of the revolutionary era's wave of abolition. But their trajectories had diverged as slavery was slowly done away with in the North. In Massachusetts, enslaved litigants succeeded in undoing slavery by judicial

decree by the 1780s. New York set in place a gradual emancipation scheme in 1799 and then abolished the institution altogether in 1827.²¹ No example was more proximate than that of Pennsylvania. That state's 1780 abolition act freed the children of enslaved people and helped fuel the emergence of an important and thriving African American public culture. With Philadelphia just over a hundred miles from Baltimore by coach, African Americans were able to move between the two cities for work and to strengthen ties of politics, church, and family. The questions black Baltimoreans asked about rights and citizenship did not differ greatly from those being posed in New York and Philadelphia.²²

Connections to the South were more difficult to maintain. Baltimore was a city of migrants, and in this sense the presence of former slaves and fugitives linked Baltimore to the South, especially to its nearest neighbor, Virginia. During the summer season, free black men and women from Baltimore labored at the region's resorts and spas, where they encountered other Southerners, black and white. Still, black laws increasingly restricted travel, and local authorities curbed the development of independent black institutions such as churches. Farther south in Charleston, for example, the Reverend Morris Brown and his AME congregation were harassed and their church was closed down by the city when officials discovered alleged plans for a slave uprising. Brown would relocate to Philadelphia and become the denomination's second bishop, but the demise of his Charleston church reflected how regionally restricted such institutions were.²³

Free black Baltimoreans looked to the South and saw slavery gaining ground as a political and economic institution.²⁴ The success of cotton fueled a new demand for enslaved labor. Upper South states like Maryland were drawn into a new slave trade, a domestic one in which prices for enslaved people sold out of Baltimore were driven by the demand of markets in Natchez and New Orleans. These forces were being felt as early as 1790, and by 1820 a robust internal slave trade was in operation. Some Maryland commentators condemned it.²⁵ Journalist Hezekiah Niles "supremely hated" the trade for its overall inhumanity, and underscored how "wretches" were kidnapping free African Americans and selling them as slaves.²⁶ Maryland lawmakers attempted to prohibit the domestic trade beginning in 1780, later stepping up their efforts by prohibiting the out-of-state sale or transport of slaves who had been promised their freedom after a term of years.²⁷ Still, the traffic in persons continued. A local grand jury published its observations of widespread kidnapping. It was an "evil," the jury members explained, that persisted despite legislation to the contrary. The demand from markets further south led to the out-of-state sale of term slaves – those bound for a number of years rather than for life – and the kidnapping of "free negroes decoyed by stratagem or dragged by force . . . and sent away."²⁸

Black Baltimore's far-reaching vantage point is perhaps best understood by way of the people who moved into and out of the city. Human migrations large

and small linked Baltimore to a geography that stretched to the Caribbean and South America. Some journeys were solitary. Such was the case for free black sailors who passed through the port. Although their numbers are difficult to document, we can say something about the numbers of men from Maryland who became mariners. In 1810, for example, 7.4 percent of black heads of households were said to be seamen.²⁹ Such men were “vectors of experience and information” in regional networks of communication. Black seamen shared news by word of mouth, the passing of newspapers, and their very demeanor, which could generate rumors and debate about happenings in distant locales.³⁰ Other black migrants came into the city as parts of households and under compulsion or duress. When Caribbean planters migrated to Maryland, as many did during the Haitian Revolution, they established plantations south and east of Baltimore, bringing with them enslaved workers. Many labored as domestics; some lived independently and were hired out for wages. Some escaped, disappearing into the city’s growing free black enclaves.³¹

White Baltimoreans did not agree about how to regard the growing free black population. Between 1790 and 1820 the free black population in Baltimore had exploded from just 323 persons to more than 10,000. The overall percentage of black households in the city had doubled, from 11.7 percent to 23.5 percent.³² Some expressed alarm, like Luther Martin, an antifederalist member of the United States Constitutional Convention and former Maryland attorney general. Martin wrote that the city risked becoming “the head quarters of free blacks and people of colour, not only from other states in the Union, but from the islands.”³³ He was especially distressed about a recent court proceeding in which a woman, alleged to be a fugitive slave, had been released. There were differences over the merits of the case, but Martin’s true concern was how the city’s free black community was growing by way of local manumissions and the in-migration of black people from the lower South and the Caribbean. Not everyone agreed with Martin, and he received a quick public retort. The pseudonymous “Humanity” defended the court’s action in freeing the alleged fugitive, and then generally decried the presumption that black people were slaves. “Such a proposition,” the writer urged, was “opposed to every principle of law, of justice, and of humanity and it is in vain to urge in support of it, that the colour of a negro alone is sufficient evidence of his being a slave.”³⁴ Over time this position would be defeated and color would raise the presumption of slave status. Still, Humanity’s perspective was important. It admitted that Baltimore was becoming a haven for free black people and then urged that they should expect due process and fairness. With people like Martin and Humanity at odds, Baltimore was an awkward haven.

In distributing the pages of *Freedom’s Journal* in Baltimore, Charles Hackett disseminated a retort that sought to clarify how free black Americans fit into the landscape of the city and of the nation. Civil rights, readers learned, were “the greatest value,” and the paper’s editors vowed that “it shall ever be our duty to vindicate our brethren, when oppressed, and to lay the case before the

publick.”³⁵ Those rights, the paper’s prospectus asserted, were rooted in the nation’s founding document, the Constitution.³⁶

The black quest for rights had a long history, *Freedom’s Journal* reported. A story reprinted from the *Liverpool Mercury* illustrated how quotidian claims intersected with constitutional principles through the life of one of the early nineteenth century’s most commercially successful and politically influential black leaders, Paul Cuffe. In 1780 Cuffe, a Dartmouth, Massachusetts, mariner, and his brother John had been called on by a local collector to pay a personal tax. The two puzzled over their obligation, knowing that the laws and the constitution of the state linked taxation to citizenship. If the law demanded the payment of a tax, they reasoned, the same laws should “much necessarily and constitutionally” invest them with the right of representing and being represented in the state legislature. The two decided to insist on such a recognition of their rights. The Cuffes, explained the paper, won their claim. There was for readers of *Freedom’s Journal* an instructive quality to the link between a ministerial act, such as paying taxes, and the securing of rights as citizens.³⁷ In his influential though short life – he died in 1817 – Paul Cuffe was remarkable for his business acumen, his political deftness, and even his intellectual contributions to an “African” identity among black Americans. He was also remarkable for his quest for citizenship.³⁸

The Cuffe brothers’ experience as seamen during the American Revolution hinted at how they developed expectations about citizenship through exchanges during their service aboard whalers and their detention in cells of the British Empire. *Freedom’s Journal* brought such vantage points home, inviting readers to share in knowledge that made possible a comparative and transnational point of view. Sometimes this took the form of speculation. “What will be the case, when the slaves in the West Indies and the Spanish states, become all free citizens?” the paper asked.³⁹ Haitian history provided an example of what slavery’s abolition might bring. Readers were reminded how, for example, in 1791 the French National Assembly had extended to free people of color “all the privileges of French citizens,” including the right to hold office.⁴⁰ In “South America and Hayti,” readers learned, “the Man of Colour is seen in all the dignity of man, freed from the prejudices, and endowed with the rights, and enjoying all the privileges of citizenship.”⁴¹ Comparative thinking about citizenship opened minds to the prospect of colonization and migration to Liberia. It was a “mere waste of words to talk of ever enjoying citizenship in this country,” the journal’s editors declared, and the Liberian example provided an important counterpoint.⁴² As one correspondent put it, these examples and others ensured that free black men and women were “so far enlightened, as to know that they are unjustly, in this land of liberty, denied the rights and privileges of free citizens.”⁴³

Freedom’s Journal also brought questions about free black citizenship close to home for Baltimoreans. In 1828 a correspondent reported, after a short visit to the city, that a free man of color “may be respected in his business; he may

be encouraged; but when we come to talk of liberty – of the rights of citizenship – of his evidence in a court of justice against his fairer brethren, we cannot but perceive that there is little justice doled out to him by the republican laws of the state of Maryland.”⁴⁴ Men from cities such as New York or Philadelphia recognized their relative status. “Baltimore was never designed to be the abode of your humble servant,” a correspondent wrote. “A man of colour, educated at the north, can never feel himself at home in Baltimore,” learned the paper’s readers.⁴⁵ This view had merit. Black Baltimoreans made their way in a world framed by a particular if not unique legal culture, one that offered no certainty about their status.

If geography opened Baltimore up to the world, legal culture threatened to close it off. The city’s free black men and women lived at the crossroads of geography, culture, and politics. But legal culture worked to close off these influences. Lawmakers found it nearly impossible to fix the status of free black Marylanders. Instead, they put in place a piecemeal scheme of requirements and restrictions aimed at curbing the very mobility and independence that life in the port city might invite. This tension, between ambition and possibility on the one hand and repression and control on the other, led free black families to study law. Their rights and status, confused and uncertain, relied on no single text, ruling, or statute.

Constitutions were one touchstone, and founding texts seemed to suggest that free people of color might expect to live as fully rights-bearing persons, equivalent to their white counterparts. The constitutions of the United States and Maryland were silent on the status of free black people. The 1776 Maryland state constitution did not use the word “citizen,” although it recognized inhabitants and free men. It ascribed differences among Marylanders: there were non-Christians whose religious liberty was not guaranteed, clergy members who could own property only with permission of the legislature, and those under twenty-one or without property who were politically disenfranchised. Free people of color appeared to stand on a par with whites. The United States Constitution elided the question of who was a citizen. Its broad categories distinguished among free people, enslaved people, and Indians. It did not address the status of those who, though descended from slaves or the formerly enslaved, were now free. The Constitution’s only references to citizens were fragmentary and implicit: only citizens could serve as members of Congress; only “natural born” citizens as president; only citizens could sue in federal courts. The Constitution thus guaranteed privileges and immunities of citizens but did not delineate how to distinguish citizens from noncitizens. The matter of race and citizenship, in both state and federal terms, remained unsettled. For Baltimoreans, neither constitution expressly barred legal distinctions grounded in race, leaving an opening for legislative action.⁴⁶

There was little express collaboration between state and federal lawmakers in the early nineteenth century on the question of free black people, and the character of what emerged from Congress and from the state assembly

differed. Maryland reached aggressively into the lives of free black people in the early republic, but Congress was more restrained. When setting the terms of the first national census enumeration in 1790, Congress provided that enumerators should distinguish between “the sexes and colors of free persons.” Hence, the census schedule was divided into the categories of free whites, “all other free persons” including free African Americans, and slaves.⁴⁷ Congress did immerse itself in more local questions through its governance of the new District of Columbia. In 1802 Congress limited the vote and service in the militia in the district to “free white male inhabitants of full age.”⁴⁸ No single piece of congressional legislation was felt more in Baltimore than the Naturalization Act of 1790, in which Congress expressly limited naturalization to free white persons; free people of color were not eligible to become naturalized citizens of the United States.⁴⁹ Thus in Baltimore, a destination for free black people from throughout the Americas, especially seamen, prohibitions against naturalization distinguished free black men and women from their white counterparts.

State lawmakers also began to draw boundaries around black Marylanders, attempting to fix them in place and in status through what came to be termed black laws. These did not constitute a comprehensive or coherent code such as that governing slavery and free people of color in the French and Spanish Americas.⁵⁰ Between 1780 and 1820, Maryland lawmakers set in place a piecemeal series of regulations. That about which the constitution had been silent now regularly animated the state assembly in Annapolis, as lawmakers asked where free African Americans stood in Maryland’s legal culture.⁵¹

Central to this new legal regime were restrictions on mobility. By 1820, Maryland had closed its border to the in-migration of free black people, rendering its own residents increasingly isolated. State laws defined free black men and women in part by restricting their comings and goings. Maryland began by first restricting the slave trade into and through the state. By 1783, the legislature codified what was already true in practice: importing slaves from other states or countries was strongly discouraged, first by prohibitive taxes and then by criminal penalties. It would be another twenty-plus years before lawmakers regulated the movement of free black people. When they did so, in 1806, they imposed a hefty ten-dollar-per-day fine on those who migrated into the state. To make the state’s position all the more clear, the new law added extra discouragement: failure to pay such fines could result in being sold out of Maryland, in essence enslaving free people.

For those remaining in Maryland, no authority spoke directly to their citizenship. Still, their rights narrowed between 1780 and 1820. Free black men had voted until the last years of the eighteenth century, but that door gradually closed. Initially lawmakers drew a distinction between “historically” and “newly” free people. Those free before 1783 retained a broad set of rights, while those born or manumitted after 1783 were distinguished by the rights they did not possess: they could neither vote nor hold public office. By 1783,

“newly” freed people were barred from testifying against whites, although, notably, “historically” freed people were not. This distinction did not hold very long, however. By 1801, the constitution had been amended to limit the vote in Maryland to “free white male citizens, and no other.” All free black people were thus disenfranchised.⁵²

This fissure and others suggest how courts remained more porous institutions even as political rights were being revoked. When Maryland’s high court attempted to interpret the state’s tangled laws regulating black testimony, it failed. In the case of *State v. Fisher*, a trial court had allowed a free “mulatto” woman to testify against the interests of the defendant, a “free born white Christian man.” The verdict was guilty. On appeal the high court asked whether a free mulatto woman could so testify. The justices scrutinized the statutes going back to the early eighteenth century and found they “could not agree in opinion upon the question.” There was, as the decision put it, “a diversity of opinion.” The testimony and the verdict were thus permitted to stand.⁵³ Legislators also suggested that courthouses remained open venues for free black Marylanders. The laws of 1783 generally sought to limit the rights of “newly” free black people. But there were important exceptions. They could by positive law “hold property” and “obtain redress in law or equity for an injury to . . . person or property.”⁵⁴

Maryland’s early black laws, adopted in fits and starts, were never comprehensive. Nor did they bar African Americans from the courthouse. Instead, omissions left spaces through which free black people might insert their interests in courtrooms that remained open to black litigants. Maryland allowed the education of free African Americans, and in Baltimore, church-sponsored schools were in place by the first decade of the nineteenth century. The state’s borders, which were crowded with legal barriers, expressly retained important openings. Black seamen, along with wagoners and messengers, could enter the state while performing their duties without risking punishment. There were no formal restrictions on the movement of free black Marylanders themselves. They could leave and reenter the state at will, another avenue by which networks remained intact.⁵⁵

The 1820s marked a turning point, and two poles of a debate emerged. One view was that free African Americans were citizens of the individual states and of the United States, entitled to the privileges and immunities of citizenship guaranteed by the Constitution. The opposing view was that they were persons other than citizens, perhaps aliens or denizens. As such, free black men and women were subject to black laws as well as policies promoting colonization, banishment, and other modes of removal from the United States. Citizenship and the rights that might attend it took on new saliency. Some saw in it a strategy for resisting removal. Others saw in it an extension of rights to persons who must not become part of the body politic. The issue was joined in 1821, in a congressional debate over Missouri’s state constitution and in a New York State constitutional convention. Lawmakers faced off, charting out the terms

by which the question would be debated going forward. Black Marylanders watched as arguments over their status heated up.

When Congress took up Missouri's admission to the union in 1821, no one anticipated how free black citizenship would nearly derail the process. A slaveholding territory, Missouri proposed a state constitution that mandated laws "to prevent free negroes and mulattoes from coming to and settling in the State, under any pretext whatsoever." The proposal was harsh, and it gave Congress members pause. Would a prohibition against the in-migration of free persons of color violate the US Constitution's "privileges and immunities" guarantee? The answer, all agreed, turned on the citizenship status of free African Americans. If African Americans were citizens, Missouri's proposal drew impermissible distinctions such that its constitution would be refused. Were they not, Missouri would be free to bar black Americans, and the proposed constitution would become law.

The resulting debate stretched over many days and fills scores of pages in the *Annals of Congress*. In the Senate and the House, lawmakers reasoned aloud about what rights flowed from citizenship and to whom such rights belonged. Free African Americans were the hard case; everyone was aware of the state black laws already in place. Citizenship had never before been subject to such exacting scrutiny, with such forceful advocates on both sides. Some lawmakers took the position that free black people were citizens. As one argued: "If a person was not a slave or a foreigner – but born in the United States, and a free man, going into Missouri, he has the same rights as if born in Missouri." This was *jus soli*, or birthright citizenship. Others saw no conflict in permitting Missouri to bar black migrants, the implication being that free black Americans were not citizens. These were remarkably serious, well-reasoned, and in some cases lengthy examinations of the question. Those present were immersed in nothing short of a primer on the history and the practice of citizenship.

Northern state legislatures weighed in, speaking on behalf of those black men and women whom they deemed citizens. From New York came the insistence: "If the provisions contained in any proposed constitution of a new State deny to any citizens of the existing States the privileges and immunities of citizens of such new State, that such proposed constitution should not be accepted or confirmed."⁵⁶ Vermont also cried foul, interpreting the Constitution's privileges and immunities clause. Missouri proposed to prohibit the in-migration of "citizens of the United States" solely "on account of their origin, color or features," Vermont legislators said, while their state deemed free men of color "citizens of the United States."⁵⁷

On the floor of the Senate the debate over Missouri was an elaborate exegesis on how the privileges and immunities clause might apply to black Americans. Southern lawmakers, like William Smith of South Carolina, endorsed Missouri's effort to bar free black migrants who sought entry into the state. Smith opined that Missouri's constitution was "republican" and without "objection."⁵⁸ Lawmakers split along sectional lines, with men of the North

explaining the status of black men and women in their states and then invoking on their behalf full protection under the Constitution. Rhode Island's James Burrill mocked Missouri's proposed constitution, pointing to black military service: "We have colored soldiers and sailors, and good ones, too, but under no pretext whether of duty or any other motive, can they enter Missouri." Citizenship, he went on to explain, turned on birthright: "If a person was not a slave but a foreigner – but born in the United States, and a free man – going into Missouri, he has the same rights as if born in Missouri."⁵⁹

In the House of Representatives, the debate was similarly divided. Pennsylvania's John Sergeant, chair of the judiciary committee, delivered one of the most elaborate presentations, lasting "upwards of two hours." Much in his remarks went to defeating the suggestion that Congress should leave questions about the propriety of Missouri's constitution to the judiciary. Sergeant was emphatic that Congress was charged with safeguarding the Constitution and its privileges and immunities clause by way of its power to review Missouri's admission as a state. When he finally turned to the merits, Sergeant explained that he disagreed with Congressman William Lowndes of South Carolina: The privileges and immunities clause "made no distinction of classes, but extended equally to both classes." Free people of color were, in his view, citizens of individual states, including "North Carolina, New York, and Massachusetts." They did not vote when not freeholders, "yet no one would deny them to be citizens of those States." What he and others sought was the affirmation of "the humble simple privilege of locomotion . . . a right indispensable to citizenship."⁶⁰

Maryland lawmakers were silent. And their silence is remarkable if only because, amid a great deal of speechmaking, they did not weigh in even as their state was invoked repeatedly in the House. The example of "the Jews of Maryland" was used to complicate who was a citizen and what rights might flow from that.⁶¹ It was reported that under Maryland's "old constitution" free people of color had voted, only to have the terms later changed to exclude them.⁶² Maryland's black laws were said to show that the states had always regulated free black people "wholly independent of any federal control."⁶³ The state's representatives did vote on the various interim motions and did so as a block with other Southerners. But what precisely they thought was not recorded.

The sixteenth US Congress fumbled, letting ambiguity prevail. Missouri would be allowed to retain the clause in question. The state could bar free African Americans from entering. Still, Congress went on to admonish Missouri not to enact any law that would impair the rights of citizens from other states, including citizens of color. Were free African Americans citizens protected by the privileges and immunities clause, or were they not? Congress tried to have it both ways, it seems. The result left Missouri to act on its own conscience and kept free African Americans in limbo.

New York's state lawmakers confronted the same thorny question: Were free black Americans citizens, and if so, what rights derived from that status?

An 1821 statewide convention met in Albany to revise the state constitution. Spurred by a Republican Party faction, the expansion of the franchise in New York was front and center. The state's property qualification was slated for elimination. How might this affect the rights of the state's 20,000 free people of color?⁶⁴ While a small number of property-holding free black men had long enjoyed the franchise, lifting the property qualification would open the door to widespread black voting. Some among the convention's delegates sought to ensure that it would not. Their objective became clear by way of a proposal to broadly extend voting rights to men who paid taxes, served in the militia, or worked on the public roads, the vast majority of whom were white.

The convention split. Proponents of a race qualification argued that black New Yorkers were incapable of exercising political judgment. On the other side were men who argued that free black men stood equal to their white counterparts when it came to political rights. Congress's Missouri debates were invoked; if black people were citizens then they could not be deprived of privileges and immunities. The United States Constitution, it was argued, barred the use of race as a voting qualification. The arguments were lengthy and eloquent, but the result was another awkward compromise. The attempt to include the qualification "white" was defeated. Claims that endorsed the political capacities and citizenship status of black Americans seemed to carry the day – at least until later in the convention. Before they adjourned, delegates set in place a freehold property qualification of \$250 only for black men. Thus, in New York, free black people were citizens, and yet their citizenship was circumscribed in ways that the citizenship of white men was not. Lawmakers fumbled, enabling differing conclusions. Free black New Yorkers were citizens of the state, but citizens of a distinct or second class. Free black New Yorkers were not citizens at all, making their qualified disfranchisement permissible. Or they were citizens in a state where voting rights were determined by race rather than citizenship status. Whatever the interpretation, the end point was further confusion.⁶⁵

New York's debate reached well beyond that state, circulating widely through the writings of a delegate named James Kent. Kent's *Commentaries on American Law* became a standard reference for antebellum practitioners and jurists, and he devoted extensive thought to the puzzle of free black citizenship, pulling together many of the small bits of lawmaking that shed light on the topic. Of the deliberations at his home state's constitutional convention, he wrote: "It is certain that the constitution and statute law of New-York, speaks of men of colour as being citizens, and capable of being freeholders, and entitled to vote." Kent's own opinion was uncharacteristically muddled, however. He began: "Negroes or other slaves, born within and under the allegiance of the United States, are natural-born subjects, but not citizens." But then he took the other view: "If a slave born in the United States be manumitted, or otherwise lawfully discharged from bondage, or if a black man be born within the United States, and born free, he becomes thenceforward a citizen, but under

such disabilities as the law of the state respectively may deem it expedient to prescribe to free persons of color.”⁶⁶ Jurists who consulted the era’s most widely read commentaries found the question of black citizenship among the issues raised. What they did not find was a clear answer.

Back in Baltimore, debates over rights in New York and Missouri were instructive, though remote. The principles that were being worked out may have appeared abstract, at least until *Freedom’s Journal* brought the case of Gilbert Horton to the attention of Baltimore readers. A free black mariner, Horton had been threatened with sale as a slave in Washington, DC. That city’s proximity to Baltimore might have been enough to generate real concerns. As unsettling, however, was how law’s intricacies left black Marylanders especially vulnerable. Horton had been detained as an alleged fugitive under an “old law of Maryland,” one that had been repealed in the state but not in the District of Columbia, which had adopted Maryland law at its founding.⁶⁷ The case required both lay people and lawmakers to closely examine where free people of color stood.

The debate surrounding Horton’s circumstances made plain how abstract constitutional interpretations could play out in the lives of free black men and women. Horton, a free man from New York, had been “travelling in the pursuit of his lawful business to Washington” when he was “seized and imprisoned as a run-away slave.”⁶⁸ Horton’s story – that of a free black man whose trade drew him across state lines and who was not able to document his liberty or pay his jail fees – paralleled the circumstances of many black Baltimoreans. They had to ask themselves: Were *they* citizens, or could they be sold as slaves without due process of law?

Gilbert Horton was still a young man when he found himself in a Washington jail facing his sale as a slave for life. Enslavement was not wholly unfamiliar to Horton. He had been born enslaved in Westchester County, New York, at the end of the eighteenth century, just as that state passed a gradual emancipation law.⁶⁹ Its terms provided that Horton would be manumitted at age twenty-eight.⁷⁰ However, in a turn of good fortune, Horton’s father, Peter, struck a deal with his son’s owner.⁷¹ Peter Horton labored one year in exchange for his son’s freedom. As his father later reported, Gilbert was around eight years of age when manumitted. His freedom was followed by a period of indenture. Gilbert spent many of his early years in service.⁷² The complexities of slavery and freedom were thus not new to the young man, though likely nothing had prepared him for the auction block and reenslavement.

Horton made his living as a mariner, a vocation that required him to leave New York and enter less familiar slaveholding ports. In 1826 he was serving aboard the navy’s USS *Macedonian*. He left the frigate’s service that June in the port of Norfolk, Virginia. By July Horton was in Washington, where he was a relative stranger. On a July day, as he headed along the streets of the capital city wearing what were described as a “tarpaulin hat, linen shirt, blue cloth jacket and trowsers [*sic*],” Horton was detained.⁷³ Unable to produce evidence

of his free status, he was presumed to be a fugitive slave. Horton insisted that he was not.

Horton's fate took a turn when a local marshal placed an ad in Washington's *National Intelligencer*. The notice generally assumed Horton to be a slave, urging his "owner or owners . . . to come and prove him, and take him away, or he will be sold, for his jail fees and other expenses, as the law directs." But something about his story rang true enough that the notice added Horton's assertion that "he was born free, in the State of New-York, near Peekskill." This caught the attention of editors throughout the North, and news of Horton's legal predicament spread. A Connecticut newspaper reprinted the notice beneath an excerpt from the Declaration of Independence, putting it to readers that if "all men are created equal," how could it be that, "for the colour of the skin . . . a man born free is attainted, cast into prison, and sold as a slave?"⁷⁴ A New York paper remarked that Horton's detention violated "every principle of humanity and justice, and of constitutional law."⁷⁵ Another New York newspaper, the *Commercial Advertiser*, most closely chronicled the case. Horton's capture symbolized how untenable was a nation divided between slaveholding and non-slaveholding states, especially when free black men were in some jurisdictions regarded as citizens. The paper captured the view that would drive the ensuing debate: "The declaration – 'I am a Roman citizen,' was once a passport to the respect and protection of the world. So let it be with respect to the citizens of New-York."⁷⁶

Deeds followed words. James Brown of Peekskill issued a short note to those holding Horton, confirming his free status: "[he is] a native of this town, and a free man, and has a father living, who is anxious to have him released, and is willing to offer any testimony concerning him in his power."⁷⁷ Westchester County leaders organized to steer Horton's fate. Farmer Oliver Green invited "citizens of West Chester County" to meet at his home, where they would confirm Horton's status, obtain his "immediate liberation," and express "their sense of this outrage on personal liberty in a territory under the immediate jurisdiction and control of the government of the United States."⁷⁸ The men of Westchester were not the only ones to act on Horton's case. Papers reported how others had visited Horton in his cell, confirming what the original notice suggested: Horton was a free man whose father lived in Yorktown. He provided the names of white men in New York City who would confirm his story: a Judge Oglesby, a grocer named Abraham Pearce, and dairy operator Job Griffin. Horton had spent some time in New York City, enough time to have develop white allies who could corroborate his story. There was "little reason to doubt" the young man's story, Horton's visitors reported, adding that they would "of course be happy to lend our aid to release him."⁷⁹ News of Horton's case reached Baltimore at the end of August, by way of a notice in the *Baltimore Patriot*.⁸⁰

Testimonials continued to surface, fueling the construction of legal arguments back in Westchester. John Owen of Somers, New York, wrote in

to the *Commercial Advertiser* to advise that Horton was “unquestionably a free man,” having been manumitted and then apprenticed.⁸¹ With this and other witness statements in hand, Oliver Green and Judge William Jay, son of Governor John Jay, hosted Westchester’s public meeting on the evening of August 30. The gathering issued eight resolutions, including one that turned on state citizenship and a reading of the US Constitution: “Resolved, that the fourth Article of the Constitution of the U. States, the citizens of each State, are entitled to all the privileges and immunities of citizens of the several States; and that it is the duty of the State of New York, to protect its citizens in the enjoyment of this constitutional right, without regard to their complexion.”

Events unfolded quickly in the days that followed, made all the more complicated by the delay in transmitting news between New York and Washington. Governor DeWitt Clinton of New York was asked to issue a demand for Horton’s release, which he did in a letter to President John Quincy Adams. Clinton reiterated the conclusions of the Westchester meeting: Horton was a citizen of New York being subject to a Washington law that was “at least void and unconstitutional in its application to a citizen.”⁸² Horton was released unconditionally, likely even before Clinton’s letter arrived.⁸³

At least one newspaper’s editor advised that Horton’s “friends” should “take immediate measure to enable him to prosecute the persons who have subject him to imprisonment, for the double purpose of doing him justice, and trying the question of the constitutionality, or unconstitutionality of the act under which he suffered.” The editorial continued: “An action may be commenced before the District Court, and carried to the Supreme Court of the United States, where the specific question must be tried and determined.”⁸⁴ William Jay issued a memorial to Congress consistent with the Westchester resolutions: “The outrage offered to a citizen of this county, and a violation of the constitutional rights involved in that outrage, afford to the meeting new and strong evidence of the impropriety of the continuance of slavery.”⁸⁵

Congress once again became a main stage. Horton’s dilemma was resolved, but the debate continued. Exchanges about the rights of a free man of color and citizenship in New York crystallized the tension between state citizenship and those protections guaranteed to all citizens by the Constitution. The debates of 1821 – over the constitutions of New York and Missouri – were revived. Aaron Ward, a representative from Westchester County, set forth a resolution that embroiled Congress in a disagreement over the status of Horton and men like him. Ward’s objective was amending the laws of the District of Columbia to prevent circumstances such as that which Horton confronted. The congressional Committee on the District of Columbia would, by the terms of the resolution, inquire into and consider the repeal of “any law that authorize[d] the imprisonment of any free man of color, being a citizen of any of the United States, and his sale as an unclaimed slave, for gaol fees and other charges.” Ward explained that he was acting in accordance with his sense of duty to his constituents and reminded the members of Horton’s case, describing the

latter as “a free man of color, and a citizen of that county, and of the State of New York.”⁸⁶

Ward anticipated objections, and his extended remarks urged that it was “the duty of every Representative on this floor, to guard and protect the rights of this Union,” including for free men of color. He alluded to the law under which Horton had been detained and threatened with sale, and then gave a brief treatise on its unconstitutionality. Article 2, section 3, protected a “free citizen” from servitude for life without a trial and the allegation of a crime. The Fourth, Fifth, and Sixth Amendments established the “absolute rights of persons, and secure to every free person, whatever may be his complexion, the right of personal security, personal liberty, and private property.” All citizens, he concluded, were “entitled to the privileges and immunities of citizens in the several states,” pursuant to article 4. To leave no doubt as to his position, Ward reiterated that the district could not “strip the free man of color of his privileges as a citizen of the free and independent State of New York.” He challenged the House: “Is a free citizen, then, because his color happens to be dark, to be less protected by the laws than the poor debtor, in the fangs of a merciless creditor?”⁸⁷

House members like John Forsyth Sr. of Georgia attempted to table or otherwise defer consideration of Ward’s resolution. As Kentucky representative Charles Wickliffe explained: “He had no wish to see the Missouri Question brought back into this house.” For those with memories of 1821, the resolution’s terms – in particular, its claim that free men of color were citizens entitled to constitutional protections – were “calculated to rouse feelings and produce excitement.”⁸⁸ And Wickliffe was right, if not about Ward’s intent then about his effect. Forsyth captured the broad strokes of the debate, explaining that there was a “radical difference of opinion.” Some, he reported, “claim as a matter of right, that black persons, held to be citizens of the United States, in the State of New York, should enjoy in every other state the same privilege.” Southern delegates “deny this claim,” he went on: “We hold that we have the right to exclude free People of Color, to eject them and to limit their privileges, when we admit them to reside among us.”⁸⁹ Forsyth proposed a compromise. If Ward would admit that the laws of the district were constitutional, he would endorse an inquiry into altering them.⁹⁰

Ward ultimately accepted the compromise, gaining an inquiry into the laws of the district at the expense of making citizenship for free black people a part of the formal record. Still, the debate exposed deep fissures among lawmakers about black citizenship. Indeed, the exchanges on the floor of Congress were broadly instructive as they reached a wide readership when published in newspapers. It would be two weeks before the Committee on the District of Columbia would return its recommendations. It proposed much of the substance that Ward initially sought, including a prohibition against the sale into slavery of free persons of color for “prison fees and other charges

of apprehension.” Gone, however, was any mention of citizenship. In place of Ward’s bold conclusions were terms such as “any person” and “free persons of color.”⁹¹ When the committee’s final proposals made their way to the floor of Congress later in January, the same conservative position held sway. Horton’s case, while a triumph in the sense that his liberty was restored, was also a defeat. Lawmakers had advocated that free black men and women were citizens entitled to constitutional protections, but they had compromised on that position when confronted with an entrenched opposition.⁹² Nothing in the language of the final bills denied free black citizenship, but the silence reflected a missed opportunity.⁹³

Freedom’s Journal made the significance of Horton’s case clear for black Baltimoreans. Lawmakers were divided in the wake of the mariner’s arrest, moving closer to a legal regime that left free people of color presumptive slaves. In Washington, one paper suggested, Horton as a citizen of New York was as vulnerable to arbitrary treatment as he would be in “Algiers or Tunis . . . Carolina or Georgia.” In a tone that bordered on outrage, *Freedom’s Journal* urged its readers to sharpen their minds: “In common with other citizens, we have rights which are dear to us; and we shall never sit patiently; and see them trampled upon, without raising our feeble voice, and entering our protest against the unconstitutionality of all laws which tend towards curtailing them in the least degree.”⁹⁴ Long after the debate faded, the antislavery press ensured that Horton’s case remained instructive. William Lloyd Garrison’s *Liberator*, in 1833 and 1834, recounted it and emphasized that lawmakers, from local judges like William Jay to New York governor DeWitt Clinton and Congress member Aaron Ward had asserted that Horton and men like him were citizens of New York and of the United States.⁹⁵ The story evidenced how free black men and women had attracted highly placed allies to their cause. Their assertions of citizenship were no mere flight of fancy. Horton’s trial and the congressional debates that followed served as a lesson on how claims to citizenship might be seriously debated and nearly won.⁹⁶

Being smart about law was, as Horton’s case illustrates, not enough. Judges and legislators predictably disagreed about the bounds of citizenship, leaving free black men and women to arm themselves with knowledge and then to hope for a lucky break if threatened with detention or worse. It was an uneasy climate. Arguments for citizenship and against the terms of black laws had become sophisticated and sometimes held sway. Still, Baltimoreans did not enjoy even the modest assumptions that New Yorkers did when it came to citizenship, and the pressure they faced would only increase. Baltimore’s port was a gateway to knowledge. It was also a locus for exit schemes, be they designed as voluntary emigration or coerced colonization. Black activists there would craft their own strategies for self-defense and begin to draw on ties to local legal minds to build their claim to place.

Threats of Removal

Colonization, Emigration, and the Borders of Belonging

Ideas about emigration, colonization, and antislavery mixed during an 1824 gathering in Baltimore's Bethel Church. The catalyst was the visit of the Haitian military officer and government representative "Citizen" Jonathan Granville. The white-led Baltimore Emigration Society sponsored the Baltimore leg of a tour that also included Philadelphia, New York, and Boston. Granville's aim was to entice free black people to abandon the United States, for most their place of birth, and migrate to Haiti and a chance at belonging. Baltimore's critics of slavery – black and white – gathered in the city's most important African American sanctuary to consider the future.

Black men came to the meeting as heads of households, church leaders, journalists, entrepreneurs, and laborers. To them, the prospect of emigration was not wholly new; Haiti had been on the table for some years, pushed there by increasingly oppressive conditions in the United States. Now the Caribbean republic offered a new pull: enticements that contrasted with the dim prospects of a future in Baltimore. Foremost were promises of "economic opportunity, equality, and citizenship," the latter guaranteed by a constitutional provision.¹ There were material incentives as well. Haiti's president, Jean-Pierre Boyer, had authorized his emissary to defray the costs associated with relocation. On arrival, emigrants would receive land and provisions for setting up their households. The crowd at Bethel Church probed Granville, giving voice to their doubts. Once satisfied, they pledged to seek a "speedy" and "effectual" emigration. Twenty-five men – including Charles Hackett, James Deaver, Robert Cowley, and Moses Freeman – were appointed to "confer with the free people of colour" and continue the work.²

The consensus evidenced during Granville's visit covered over the indecision and insecurity that gripped black Baltimoreans.³ In the weeks and months following the Bethel Church meeting, those who had signed on to support emigration veered off track. Some did try to keep their promise. For example,

CONSTITUTION
OF THE
AMERICAN SOCIETY
OF
FREE PERSONS OF COLOUR,
FOR IMPROVING THEIR CONDITION IN THE UNITED STATES;
FOR PURCHASING LANDS; AND FOR THE ESTABLISH-
MENT OF A SETTLEMENT IN UPPER CANADA,

ALSO

THE PROCEEDINGS OF THE CONVENTION,

WITH THEIR

ADDRESS

TO

THE FREE PERSONS OF COLOUR

IN THE

UNITED STATES.

PHILADELPHIA:
PRINTED BY J. W. ALLEN, NO 26, STRAWBERRY-ST.
1831.

FIGURE 2.1 The first “colored” convention. The black convention movement was a crucible for ideas about black citizenship. Baltimore activists, including Hezekiah Grice, aided the movement’s founding and drove thinking about birthright citizenship both within and outside of convention proceedings. Image courtesy of the Colored Conventions Project.

AME minister Moses Freeman asked to be sent to Haiti as a missionary, only to be refused.⁴ More typical were the men who stayed put. Charles Hackett never left Baltimore and instead became an agent for *Freedom's Journal*. Thomas Green and Robert Cowley joined the black-led convention movement.⁵ James Deaver joined with activists Hezekiah Grice and William Watkins to form a Legal Rights Association that aimed to establish black rights in the United States.⁶

By one measure, Granville's visit was not a success in that few Baltimoreans migrated to Haiti. Still, it was the sort of occasion that built relationships between black and white activists through debates about colonization, emigration, and antislavery. With this came new exchanges about law. The Haitian Emigration Association's secretary, Daniel Raymond, was a lawyer, political economist, and expert on race and law.⁷ In the 1810s, Raymond represented enslaved people in a series of complex freedom suits.⁸ He was briefly a proponent of colonization and emigration, but by 1825 Raymond was an antislavery organizer running for the Maryland State Assembly on a gradual-emancipation platform.⁹ Newspaper editor Benjamin Lundy closely chronicled Granville's visit and more broadly reported on developing debates about race and rights. Lundy soon counted among his close associates Raymond, Hezekiah Grice, and William Watkins.¹⁰ These were networks by which black activists further developed their insights about law, generally, and rights under the Constitution in particular.¹¹

This chapter explores how the borders of African American belonging were tested in the 1820s.¹² The expansion of the colonization movement brought debates from Congress and attorneys generals' opinions into African American public culture. Since the 1810s, colonization advocates had promoted the view that there was no future for an interracial democracy in the United States. The movement's leaders supported slavery's gradual abolition but feared a further increase in the number of free African Americans. To avoid that demographic shift, there was but one solution, it was said: The removal of former slaves and their descendants to colonies in Africa or elsewhere. The American Colonization Society (ACS) held its first meeting in 1817, and by 1821 it had established the West African colony of Liberia. Committed to black expatriation, colonization remained premised in the consent of free black people; the movement did not call for large-scale, forced banishment from the United States. Still, free African Americans viewed proposals for their removal as undercutting their status as citizens, and they organized against the ACS.¹³

Emigration was, however, a notion apart from colonization. It was premised in voluntary decisions by African Americans to leave the United States for locales such as Haiti, Canada, and beyond. Emigration advocates lamented that, despite having proven their belonging through their labor and the construction of a black public culture, black Americans could not expect recognition of their rights as citizens. Colonization, in its most common form, had a paternal caste. Its proponents believed that black people would be happiest

in a black-led republic, beyond the contempt of and competition with white Americans. Emigration advocates never conceded this point. Instead, they underscored the pressure on African Americans to leave their homeland in the face of the threats that black laws and colonization imposed on daily life. Emigration to Haiti, for example, offered a balm. Wounds inflicted in the United States would be healed, as William Watkins explained on an occasion marking France's diplomatic recognition of Haiti, by being "admitted as citizens of a republic."¹⁴

The line between colonization and emigration was real, distinguishing self-determination from compulsion. Still, not all black men and women were of one mind in the 1820s, and in Baltimore they returned time and again to debates over colonization. Views about citizenship marked the divide. One pro-colonization memorial lamented: "Our difference of color, the servitude of many and most of our brethren, and the prejudices which those circumstances have naturally occasioned, will not allow us to hope, even if we could desire, to mingle with you one day, in the benefits of citizenship."¹⁵ This was the voice of those who were resigned to being noncitizens. Others – including Baltimore minister, educator, and activist William Watkins – thought otherwise. He mocked those who suggested that black men could never "enjoy the unalienable rights of man" and the "privileges of freemen." Rather than benevolence, Watkins asserted, colonization reflected an effort to be rid of a "dangerous element in the general mass of the free blacks . . . a greater nuisance than even slaves themselves."¹⁶ Through debates over colonization, African American ideas about law and citizenship were, out of necessity, worked out.¹⁷

Colonization cut close to home for black Marylanders by 1830. Congress never formally supported the scheme, but in Maryland lawmakers gave the movement political support and public dollars. The state's colonization advocates – including the presiding City Court judge Nicholas Brice – split from the ACS. The resulting Maryland State Colonization Society secured a modest appropriation of \$1,000 per year.¹⁸ By 1831, its first expedition aboard the schooner *Orion* was bound for Monrovia, Liberia. It had attracted thirty-one emigrants, just half the ship's capacity, at best a modest success. Most free black people did not sign on. Some flirted with the movement, a reflection of their despair about a future in Baltimore, and many felt the effects of the movement as migrants bound for Liberia passed through on their way to the port.¹⁹ Public meetings encouraged free black Baltimoreans to reconsider their prospects in Liberia.²⁰ This climate never drew black Baltimoreans to colonization in significant numbers, but it did make the movement and its drive to remove them ever present.

By 1831, even superficial support for colonization disappeared. Instead, organizing against the movement led to new, constitutionally grounded arguments against the displacement of free black Baltimoreans. Benjamin Lundy's *Genius of Universal Emancipation* noted that an anti-colonization movement among black activists was gaining full force in New York,

Philadelphia, and Boston. But first up was a gathering in Baltimore, a self-described “respectable meeting of persons of color.” Leaders included itinerant minister William Douglass and teacher William Watkins.²¹ Watkins had signed on to the 1824 call for emigration to Haiti. At the time of the Baltimore meeting he was leading the opposition. The meeting’s resolutions urged “caution” and “distrust” and charged the ACS with being driven by “selfish policy” rather than “benevolence.” Schemes to remove free black Baltimoreans were countered with claims to place: “Resolved, That we consider the land in which we were born, and in which we have been bred, our only ‘true and appropriate home.’”²² It was one element of an emerging claim to birthright citizenship.

Hezekiah Grice later termed his experience in these years his “*Dred Scott* case.”²³ His ideas about the legal status of free African Americans were being tested, and the long-time Baltimorean stood at a crossroads. Should he remain in Maryland or venture to a place where citizenship and rights would not be denied because of color? There might be, he believed, some promise in staying put, if only he could be certain about his status as a citizen. Grice had come of age in the wake of Maryland’s 1802 elimination of black voting rights. Freeborn in rural Calvert County, as a teen Grice had thrown off the obligations of apprenticeship and migrated to Baltimore. By the 1820s, he was a young man and formally schooled. Grice associated himself with Benjamin Lundy and William Lloyd Garrison, critics of slavery who edited the *Genius of Universal Emancipation*.²⁴ Like Charles Hackett, he was an agent for *Freedom’s Journal*.²⁵ Though allied with early abolitionist thought, Grice’s views were independent and a work in progress. He did not immediately reject the prospect of leaving the United States.²⁶ He studied migration to Canada, publishing a map of likely destinations in 1830.²⁷ And he was also an ally to those, like New York-based journalist John Russwurm, who volunteered for migration to Liberia under the auspices of the American Colonization Society.²⁸ Grice considered migration to Africa closely enough that he spearheaded the development of a black-owned trading company that proposed transporting goods and people between the United States and Liberia.²⁹

In Baltimore, Grice, along with William Watkins and James Deaver, founded the city’s Legal Rights Association. Watkins, raised in the city’s black Methodist community, published commentary in Lundy’s *Genius of Universal Emancipation*, and later in Garrison’s *Liberator*, under the pen name “A Colored Baltimorean.”³⁰ Deaver, like Grice and Watkins, was an AME Church activist and a seasoned leader who served as president of Baltimore’s African American-led Friendship Society, whose members supported the city’s early antislavery movement.³¹ They put questions about rights into the air in Baltimore. Deaver, for example, presided over a Friendship Society gathering at which the toasts included: “Give us our rights, and our motto shall be also, ‘Our Country right or wrong’” and “Emancipation without emigration, but equal rights on the spot.”³² These men asked whether the United States Constitution provided for

birthright citizenship and thus promised black Americans its privileges and immunities as provided for in article 4.³³ Together, Grice, Watkins, and Deaver sought to learn what they needed to know and to secure allies in efforts to ascertain “the legal status of the colored man in the United States.”³⁴

Watkins explained the Legal Rights Association’s ideas for readers of Lundy’s *Genius of Universal Emancipation*. His reflections were provoked by the annual celebration of July 4th. Of the Declaration of Independence, he said:

This imperishable document, whose attributes are truth, justice, and benevolence, has declared to the world that liberty, in the full sense of the word, is the birth-right of “all men”; (consequently, of every colored man in the Union;) that we are not only “born free,” but have, by virtue of our existence, “certain rights,” which are emphatically termed “inalienable.”³⁵

Watkins posed a question about the degree to which the Constitution affirmed the Declaration’s ideals: “The Declaration of Independence is our advocate, and we hope it will yet be ascertained, whether or not the Constitution of the U. States secures to us those rights which the Declaration so freely accords.” This close reading led to important questions:

Why, I emphatically ask, should we not enjoy those rights which all must confess have been wrested from us without the shadow of a crime? What evil could possibly accrue from the adoption, by the white people of this nation, of a liberal, just, and humane policy towards three hundred thousand of the home-born citizens of the United States?³⁶

Black laws and colonization were an abrogation of birthright, Watkins suggested.

Grice worked within the earliest African American political conventions, and there developed ideas about colonization and citizenship. Accounts vary on who initiated the movement’s first meeting in 1830. Some historians credit Grice himself, whose circular called for a national convention.³⁷ Others say Grice was among the first to respond when men from New York issued a call to convene.³⁸ Whatever the movement’s origins, Grice’s leadership is understood to have been foundational to organizing against colonization and black laws.

Only a handful of men served as delegates to the first convention in 1830, and Grice was among them. There, they took up the question that had animated earlier debates in Congress and state constitutional conventions: What was their standing before the law?³⁹ Situated, as the question was, in the context of repressive statutes and schemes of removal to Africa, it took on new import. Delegates produced resolutions premised in their status as noncitizens of the United States. They held out northern Canada as an alternative for emigration because there, it was said, black men and women would enjoy rights unfettered by racism. By 1831, however, the convention’s premise had changed. No longer did Canada alone promise citizenship. That convention’s second resolution

directed that “the Declaration of Independence and Constitution of the United States, be read in our Conventions; believing, that the truths contained in the former are incontrovertible, and that the latter guarantees in letter and spirit to every freeman born in this country, all the rights and immunities of citizenship.”⁴⁰ Objectives were moving toward a bold claim: From birthright flowed an entitlement to the privileges and immunities of citizens for all Americans, black and white. Grice was captivated by this possibility.

At the same time, Grice, Watkins, and Deaver worked their connections to white legal analysts, building their case. They turned to a local authority who was controversial at best: John H. B. Latrobe. A lawyer and philanthropist, Latrobe had been a colonization advocate since at least 1822.⁴¹ Latrobe read law with Robert Goodloe Harper and shaped practice in the state through publication of his 1826 *The Justices’ Practice under the Law of Maryland*, which was many times republished.⁴² By 1831 Latrobe was poised to become the first president of the Maryland State Colonization Society. He was not a likely ally. Latrobe was no expert on citizenship, and his commitment to the removal of free black Marylanders ran against the Legal Rights Association view. He was, however, an available accomplice.

There was some common ground between Latrobe and the Legal Rights Association. The man who would become Maryland’s most devoted advocate of colonization had built his reputation as a lawyer in part by representing free black men and women. As a young lawyer in the early 1820s, Latrobe made himself visible on court days, hoping to pick up a case or two, thus building a practice and a reputation. As Latrobe wrote in his diary, his earliest clients were free black Baltimoreans. When accused of petty crimes and facing summary trials, black men and women were assigned counsel and Latrobe was among them. His first courtroom victory came when he represented a “colored” man accused of larceny. His defense was vigorous and the state’s attorney finally abandoned the prosecution. Latrobe’s client was acquitted.⁴³

Once he was an established lawyer, Latrobe was sought out by black Baltimoreans for his advice. The case of Hamlet Nicholas offers a glimpse of how attorney Latrobe worked with black clients, and how they viewed the experience. Nichols visited Latrobe’s office, reporting he had trouble paying his rent. Latrobe called on Nichols’s landlord and negotiated a settlement by which the apartment was surrendered but the man’s furniture was saved.⁴⁴ Soon Nichols was back in Latrobe’s office explaining that his landlord had not honored their settlement. Latrobe again got between the parties, this time advising Nichols to pay part of his rent arrears and the related court fees as a means of ending the matter. Latrobe took the occasion to reflect on how Nichols had understood the dispute and what it meant to come before the “law.” “The law,” Latrobe wrote, “in the eyes of the lower classes, is a most powerful engine, and when engaged in it they fancy that they possess the very thunder bolts of destruction.”⁴⁵ Nichols and men like him saw in law a

power mighty enough to destroy their opposition. Latrobe was not sure they were right.

It was summer of 1827 when William Watkins called on Latrobe, and the timing was no accident. Baltimore's mayor, Jacob Small, had issued a "proclamation ordering the colored people to be taken up after 11 o'clock pm."⁴⁶ Published in the city's newspapers, the notice directed city watch men to "arrest . . . all persons of colour found in any of the streets, lands, alleys, or any open grounds in their respective Wards, at or after the hour of 11 o'clock, P.M. unless such person shall have a written permit, from his or her master or mistress."⁴⁷ It was a curfew that discriminated between black and white residents. Watkins's question: Was such an order "constitutional?"⁴⁸ Latrobe obliged with an answer. And while his notes do not reflect its substance, he provided Watkins with an opinion on "the mayor's notice ordering the watchmen to apprehend all colored people after 11 o'clock pm."⁴⁹ Seven months later, the Legal Rights Association was still paying off Latrobe's fee. The transaction may have had its origins in politics, but it was also good business for Latrobe.⁵⁰

Hiring Latrobe was just a beginning for the Legal Rights Association. When Grice and Watkins next required a legal opinion, they did not, it seems, return to the office of the city's chief colonizationist. Perhaps his opinion did not please, or his fee was too high. In any case, they need not have gone to Latrobe again. Baltimore was home to many of the country's best legal minds. Just a half dozen short blocks west of the city courthouse, on Baltimore Street, lived a leading expert: William Wirt, the former US attorney general.⁵¹ Wirt had settled into family life and private practice in Baltimore after more than twenty years in Washington.⁵² His reputation was formidable. Early nineteenth-century Americans knew him as an author of political essays and biographical sketches.⁵³ As a trial lawyer and appellate advocate, he was admired for his affecting arguments in such landmark cases as *McCullough v. Maryland* and *Gibbons v. Ogden*.⁵⁴ Wirt firmly established the office of the attorney general through development of its structure and record keeping during his long period of service, from 1817 to 1829.⁵⁵

Most relevant for Grice and his associates, Wirt was among the nation's greatest authorities on citizenship. This did not mean he was an ally; his record was mixed. In 1821, as attorney general, he was asked if a free black man could command an American merchant vessel when federal law barred noncitizens from commanding such ships. He reasoned that if free black Virginians were not full citizens of their state, they could not be citizens of the United States for this purpose.⁵⁶ His opinion left the door open to another conclusion: If a black person was deemed a citizen of his individual state, he could also be a citizen of the United States: "I am of the opinion that the constitution, by the description of citizens of the United States, intended those only who enjoyed the full and equal privileges of white citizens in the State of their residence."⁵⁷ Three years later, in 1824, Wirt was asked to render an opinion on South Carolina's Negro Seamen's Act, which provided that black mariners entering the state

were subject to detention while their ship was at anchor. Wirt deemed the statute to be unconstitutional, holding that only Congress had authority to regulate such terms of commerce.⁵⁸ The decision was not a direct affirmation of free black rights, but it put Wirt on the right side of the question.

Black activists saw useful equivocation in Wirt's position. They pointed out that he had, also as attorney general, granted patents to African Americans. Federal patent law generally denied patents to those who were not citizens. The prohibition against issuing patents to "foreigners" had not been part of the original 1790 legislation and was inserted three years later.⁵⁹ New Yorker Thomas Jennings, Grice's colleague in the early convention movement, displayed his 1821 patent certificate in a gilt frame, hung on the wall of his home.⁶⁰ The certificate evidenced Jennings's skill and ingenuity in having invented "a method of renovating garments."⁶¹ As important, the certificate enjoyed pride of place because it implicitly affirmed the free black clothier's United States citizenship, signed by Wirt and President John Quincy Adams.

It was Wirt's legal work in defense of Cherokee sovereignty that best established his reputation on constitutional questions. Wirt was not a political ally to the Cherokee. Indeed, he had previously undercut native sovereignty by, for example, ruling against the Cherokee on a question of that nation's power of taxation.⁶² But in the early 1830s, he acted as a skilled advocate when arguing *Cherokee Nation v. Georgia* (1831) and *Worcester v. Georgia* (1832) before the Supreme Court.⁶³ The retired attorney general was clear with the Cherokee leadership that he was not a cause lawyer, and he charged his customary fees.⁶⁴ Still, Wirt loaned his reputation and skill to the Cherokees and succeeded in having Georgia's regulations deemed unconstitutional. Only Congress, the Supreme Court ruled, could regulate the relationship between the state, its citizens, and the Cherokee nation. It was a short-lived victory for native sovereignty, however. President Andrew Jackson and state lawmakers would conspire to circumvent the court's ruling. The subsequent removal of native peoples from the southeastern United States, remembered as the Trail of Tears for its mortal brutality, would only reinforce free blacks' fears about colonization's grave potential.

The two matters – Indian sovereignty and free black citizenship – were not closely linked in a doctrinal sense. Advocates for the Cherokee people relied principally on an interpretation of the Constitution's provision for treaty-making power, as set forth in article 2. Free black activists, alternatively, looked to the Constitution's implicit granting of birthright citizenship and the protections extended by way of article 4's privileges and immunities clause. The arguments were rooted in different premises: the Cherokee were protected as noncitizens of the United States, and African Americans were safeguarded precisely because they were birthright citizens. Still, black Baltimoreans drew an analogy between Indian removal and black colonization.⁶⁵ Both circumstances turned on questions about the authority of the United States, or an individual

state, to remove residents from the land. In Baltimore, an 1831 gathering of black activists explained:

The American Colonization Society, then, stands in the same attitude to our colored population, as Georgia does to the Cherokees. It willfully disregards their earnest, unequivocal and reiterated desires, pretending at the same time to be actuated by the most disinterested and benevolent motives; promising to remove them to Africa only with their own consent; yet determinist by every artifice to render their situation so intolerable here, as to compel them to emigrate.⁶⁶

The Cherokee example was a cautionary tale for free African Americans who worried that if “a colony was formed for the blacks in the United States, they would in a short time be removed, as has been the case with the poor Indians.”⁶⁷ Missives about the dangers of colonization were, at times, aimed directly at men like Wirt, who had committed themselves to the interests of the Cherokee:

Finally, we hope that *those who have so eloquently pleaded the cause of the Indian*, will at least endeavor to preserve consistency in their conduct. They put no faith in Georgia, although she declares that the Indians shall not be removed but “with their own consent.” Can they blame us if we attach the same credit to the declaration that they mean to colonize us “only with our consent”? They cannot use force; that is out of the question. But they harp so much on “inferiority,” “prejudice,” “distinction” and what not, that there will no alternative be left us but to fall in with their plans.⁶⁸

The antislavery press lauded Wirt’s arguments on behalf of the Cherokee: “William Wirt has done that for the unprotected Indian – that for humanity – that for the sacred chastity of our national honor, which entitles him to the deep gratitude, the exalted admiration of every American bosom.”⁶⁹ Black activists saw how the former attorney general used the Constitution to defend the sovereignty of native people and the right of the Cherokee people to remain in place, as citizens of their own nation. Wirt argued that Georgia was barred from enforcing the laws by which it hoped to strip the Cherokee of national political powers and make them second-class citizens “of color.”⁷⁰

This is certainly what Hezekiah Grice had on his mind when he “called on” Wirt. First, the two talked dollars and cents, with Wirt explaining that the fee for his opinion would be fifty dollars. Grice replied he was prepared to pay that much for an “opinion on the legal condition of a free colored man in these United States.”⁷¹ Wirt then imposed a second condition, insisting that Grice’s questions be “written out in proper form.” Grice assented, and left to have his questions drawn up by John Tyson, a local trial lawyer, state legislator, and nephew of the Quaker antislavery philanthropist Elisha Tyson.⁷² Tyson worked with Grice, drawing up “a series of questions, based upon the Constitution of the United States, and relating to the rights and citizenship of the free black.” But when Grice returned with the questions, Wirt dodged. He deemed Grice’s

request a “delicate matter” for “an officer under the government.”⁷³ As such, Wirt explained, he was not in a position to “answer these questions as they should be answered.” It was a thinly veiled brush-off. Wirt was a private citizen, not a public official, and regularly offered legal opinions for a fee.⁷⁴ His work on behalf of the Cherokee evidenced how far he was willing to go in a “delicate matter.” Still, he declined to assist Grice. In the end, Wirt offered Grice only a sliver of encouragement. Regarding his questions, the former attorney general agreed “they should be answered, and by the best legal talent of the land.” With that, Wirt sent Grice to Philadelphia attorney Horace Binney.⁷⁵

Wirt frustrated Grice. Still, there was some sense in what he recommended. Wirt held Binney in high esteem, so much so that he consulted Binney on strategy in the Cherokee cases.⁷⁶ Binney would have been a familiar figure as a lawyer of great reputation. He had served as a legislator in Pennsylvania and Washington, DC, and was more independent of political interests than was Wirt.⁷⁷ For men like Grice, Binney’s reputation included his leadership in the antislavery conventions of the 1820s. For example, Binney had served alongside Baltimore’s Daniel Raymond as a counselor to the American Convention for Promoting the Abolition of Slavery in 1828.⁷⁸ Binney was likely admired by Baltimore’s black Methodists for having defended Philadelphia’s Bethel Church against takeover attempts by white church leaders in 1816.⁷⁹ Despite his remarkable track record of work with black activists, Binney, like Wirt, sidestepped Grice’s request. He was, the lawyer advised, unable to take on the matter owing to “age and poor eyesight.”⁸⁰ Binney then referred Grice to another colleague, attorney John Sergeant.⁸¹ Sergeant, too, had a well-known reputation as an antislavery activist. He had, as Binney explained to Grice, the “requisite character and weight” that Grice’s issue demanded.⁸²

Again Grice received a rebuff that was cloaked in some truth. Sergeant had served as Wirt’s cocounsel in *Worcester v. Georgia* and was developing a strong reputation before the Supreme Court. He also had been a “counselor” to the Pennsylvania Abolition Society.⁸³ In 1816, as a member of Congress, Sergeant presented a petition on behalf of the Abolition Society calling for a national law that would discourage the kidnapping of free African Americans.⁸⁴ Like Raymond, Sergeant had attracted the criticism of proslavery Southerners when he traveled south seeking to advocate on behalf of a man held as a fugitive slave.⁸⁵ His record distinguished him as an ally to free black Americans. Sergeant was, as Grice later told it, most amenable to providing an opinion. But he imposed a condition: Binney, too, must “allow his name to be associated as an authority in the replies.” When Binney again declined, the matter “fell through.”⁸⁶

These were formative moments for the development of ideas about black citizenship. The scale of deliberations vacillated between grand public debates and intimate law office encounters. Men like Watkins and Grice were learning lessons that no text could teach: The Constitution provided a basis for their claim to citizenship. But the text alone would not suffice. There were arguments to be honed and minds to be influenced. And the stakes were high.

Colonization and black laws did not, on their face, require the removal of black Marylanders. But their effect was to create a climate in which pressure to consent to exile was heavy and persistent.

The situation in Baltimore took a sharp turn in the fall of 1831 that the Legal Rights Association could not have anticipated. A Southampton County, Virginia, slave uprising led by Nat Turner reverberated throughout Maryland. In August, Turner and upward of sixty enslaved people carried out what is remembered as the most deadly slave rebellion in the United States. Over two days, an organized band worked to foment open revolt, freeing slaves and killing whites. Eventually they were overwhelmed by local militias and naval artilleries, and in the hysteria that followed, scores more black Virginians were killed. The county convicted and then executed fifty-six slaves said to have been among the rebels, but even this did not quash white fears. Reprisals took many forms, including the enactment of new, stringent black laws aimed at suppressing the rebellious influence that free black men and women were said to present.⁸⁷

Reverberations reached the mayor's office in Baltimore. Residents reported new fears about free black city dwellers. Whether accurate reports or apocryphal tales, their letters show how events in rural Virginia might have led to changes in urban Maryland. One report explained that, for "several nights past," a "number of Blacks" had been "assembling in military uniform – toward the west of Saratoga Street . . . about midnight with their captain at their head giving orders and putting them through their military exercise." The anonymous informant warned: "Citizens of Baltimore be on your guard – for this is a fact."⁸⁸ A crudely penned note explained that at a place about fourteen miles from the city "the colored people intend [illegible] her on Saturday next to go to Baltimore." As a "preacher," the writer pledged, "I will strive to stop dem when we gets to the city."⁸⁹ The mayor's records also include a letter alleged to be an exchange between free black men conspiring to bring Turner and his rebellion to Baltimore: "Brother Jon told me that there was eight hundred people in town that was going to help murder the damd [*sic*] white people."⁹⁰

William Watkins took up pen and paper to fire back against renewed calls for radical, forced colonization. "We would rather die in Maryland under the pressure of unrighteous and cruel laws than be driven, like cattle, to the pestilential clime of Liberia . . . Our limits will not permit us to expatriate." Watkins felt himself "emboldened" and used his voice to expose what was soon to come from the state legislature. He warned that Maryland would seek to "colonize her own free blacks," but without the "usual qualification." Gone from the equation would be "consent."⁹¹ He was right in anticipating what lawmakers in Annapolis had in mind.

The legislature's response was led by Octavius Taney, a member of the state senate's committee on the "condition of the colored population" and brother of then United States attorney Roger B. Taney. Octavius Taney took direct aim at Maryland's free African Americans, seeing in them the seeds of slave unrest.

His aim was the wholesale removal of free black men and women. For men like Grice and others associated with the Legal Rights Association, such a proposal provided one answer to the questions they had privately posed to lawyers, and it was crushing.

This was radical colonization. Taney set out his scheme to “facilitate the removal of the free persons of color from our state, and from the United States” in early 1832.⁹² He proposed that Congress fund the effort, going so far as to urge an amendment to the United States Constitution that would authorize such an appropriation were it deemed otherwise beyond Congress’s authority. Even this state-level lawmaker recognized the constitutional problems that forced removal might present. Taney’s scheme might have sounded like no more than an effort to fund existing colonization programs, but there was no such conditional language in his resolution, no hint that removal would be voluntary. The matter was referred to a joint committee of the Maryland Senate and House of Delegates, at which point Taney showed his hand, exposing the tenor of his measure. He was proposing a stopgap that would, on behalf of the citizens of Maryland, hold “persons of color to service for a term of years,” indenturing or transforming them into term slaves. Taney’s aim: “to prevent their absconding.” Rather than waiting to be removed from the state and the nation, Taney anticipated that free black Marylanders would flee the jurisdiction.⁹³ His was, it seemed, no benevolent, long-term colonization proposal.⁹⁴ It was a new strain and it was radical.

Baltimore’s black activists watched with concern. Taney’s proposal came back from committee dubbed the Hughlett bill, and passed in the Senate. No subsequent action was reported in the House of Delegates. Still, by March of the same year a joint committee had come back with what amounted to a code that regulated free African Americans in Maryland in newly wrought detail. Newcomers were barred from immigration into the state or sojourning therein for more than ten days. Those already in the state who ventured away for more than thirty days were to be deemed “aliens.” Gun ownership required a license for free black people in Maryland. Religious meetings outside the presence of a white preacher were banned, except in the cities of Baltimore and Annapolis, where written authorization would suffice. Marylanders were prohibited from purchasing from free black people foodstuffs and staple crops, unless in possession of “written authority.” Merchants faced fines if they sold “ardent spirits, gunpowder, shot, or lead” to any “free negro.” Nor could free black men sell “spirits.”⁹⁵ Although these black laws did not expressly amount to removal, free black men and women saw them as an effort to force them to flee the state’s oppressive laws and the penalties for which they provided.

Taney did not wholly fail. Maryland stepped into the breach left by Congress’s failure to fund colonization. State lawmakers created the Maryland State Colonization Society, which was rooted in consensual removal. People of color “willing to remove out of the state and to the colony of Liberia . . . or such other place” might be aided by the state’s colonization organization and

the public dollars appropriated for that purpose. Framed by new legislation that promised to constrain daily life, colonization might seem more attractive. Some black Baltimoreans continued to consider Liberia, for now they were more vulnerable than ever.

What only a few Marylanders likely knew was that at the same moment his brother was contemplating the forced removal of free black people from the state, Roger Taney was also considering what limits the Constitution might set when it came to free people of color. Secretary of State Edward Livingston requested that the attorney general provide an opinion on the constitutionality of South Carolina's Negro Seaman's Act. It was far from a settled matter, Taney explained: "My two immediate predecessors in the office of attorney general of the U. States have as you know differed in opinion on this question. It cannot therefore be regarded as a settled point. Nor free from difficulty." Taney would not venture how the nation's high court might rule: "It is impossible to foresee how it may ultimately be decided in the Supreme Court." Still, his conclusion was unequivocal:

In my opinion South Carolina or any other slaveholding state has a right to guard itself from the danger to be apprehended from the introduction of free people of colour among their slaves – and have not by the constitution of the U.S. surrendered the right to pass the laws necessary for that purpose. I think this right is reserved to the states & cannot be abrogated by the U. States either by legislation or by treaty.

Octavius and Roger Taney contemplated two sides of the same coin in 1832: the former considered how the Constitution viewed the removal of free African Americans, and the latter, how it viewed their exclusion.⁹⁶ The view of Octavius was a matter of public record. Roger Taney's opinion remained unpublished and known only to those with official dealings in Washington, at least for the moment.

Hezekiah Grice watched this with what certainly must have been a mix of disappointment and fear. He weighed options: Baltimore and the threat of schemes to reenslave or remove him, or Haiti and the prospect of full citizenship. He chose the latter. The man who had helped found the colored convention movement and created Baltimore's Legal Rights Association left the United States. Before doing so, he made one last public appearance at the 1832 black national convention. It was an awkward scene. Grice, who had played a key role in bringing such gatherings into being, was politely excused: "We tender to Mr. Hezekiah Grice, our sincere thanks for the valuable information contained therein, but that we respectfully decline any interference, as a body."⁹⁷ It is unclear what precisely preceded Grice's dismissal. What was his "interference"? Some scholars have suggested that he put the issue of Haitian emigration on the table. But the wording of the minutes suggests that it was the result of his consultations with Wirt, Binney, and Sergeant that did not fit with the convention's agenda: "It was moved that the documents or interrogatories of Mr. Grice, a representative of the

Legal Right Society of Baltimore be reconsidered . . . we sincerely hope that the Society will persevere in its laudable undertaking, and that as individuals we will give it our best support.”⁹⁸ Disappointment surely characterized Grice’s feelings. He had been rebuffed by some of the nation’s legal greats and refused a full hearing by his own compatriots. He gave up his home in Baltimore and moved to Haiti’s capital, Port-au-Prince. There, he arrived a free man and skilled worker with expectations of being a full and equal citizen.⁹⁹

Their alliances with even sympathetic lawyers generated more frustration than progress. Colonization was unjust, they were sure. Still, black Baltimoreans did not forget that promise of the port. It might be a better gateway to citizenship elsewhere. Hezekiah Grice and other emigrants were a minority, but all black Baltimoreans understood why Grice took the step he did. The promise of rights in Canada, Liberia, and Haiti was a standard by which black men and women measured their own status. The contrast might lead them to organize at home, or it might lead them to board a ship and head to sea.

Aboard the *Constitution*

Black Sailors and Citizenship at Sea

William Watkins took the occasion of the “Anniversary of American Independence” to condemn the day’s contradictions. While many white “freemen” celebrated “the ‘self-evident’ truths that all men were created equal, and endowed by their Creator with inalienable rights,” Watkins found himself downcast and contemplative on the Fourth of July, “feeling the injustice done me by the law of my country.” Maryland’s growing support for colonization especially provoked him. The prospect of removal from the United States was “anti-christian and anti-republican,” he wrote in the *Genius of Universal Emancipation*. Nothing in the past nor in the present dictated that black men and women would “never enjoy . . . the rights of freemen.” Nevertheless, it was a day of solemn reflection for black Americans, and Watkins related that he would “retire from the exulting multitude . . . to contemplate the past and the present as connected with . . . history in the land of our nativity.”¹

In his commentary Watkins set out some of the ideas generated by his work with the Legal Rights Association. He was confident about the meaning of the Declaration of Independence. Its “light and power” extended “to the oppressed of every clime” and would “never permit . . . the perpetuation of our degradation.”² But there was work to be done: “We hope it will be ascertained, whether or not the Constitution of the U. States secures to us those rights which the Declaration so freely accords. We shall then, perhaps, have a little more light upon the absurd doctrine of our everlasting degradation in America.” Watkins explained that black Americans, by their own “unremunerated labor,” evidenced their belonging, in building the nation, purchasing their freedom, and acquiring “something like a competency.” The improvement of the minds of African Americans – “intellectual elevation . . . proficiency in the arts and sciences” – refuted the colonizationist view that black men and women were destined for “everlasting degradation in America.” Citizenship was doctrine. It was an ideal. And in Watkins’s view it could be claimed through the quotidian

United States



of America.

Be it Known, That on the day of the date hereof, before me,
EDWARD HURST, of Philadelphia, Notary Public, by lawful authority duly
commissioned and sworn, and by law authorized to administer oaths and affirmations, personally
appeared,

David Cross

aged *21* years or thereabout of the height of *5*
feet *10 1/4* inches, *black* complexion, *black woolly*
hair, *black* eyes,

who being by me, duly sworn according to law, did declare and say, That he
is a native of, *Baltimore in the State of*

Maryland and a citizen of the United
States of America and a seaman
of color

And *My notary Public* *David Cross*
being by me also duly sworn
did declare and say, that the facts above stated are true, to the best of his knowledge and belief.

In testimony whereof, I have hereunto set my hand and affixed my Notarial
Seal, the *21st* day of *November* 18*55*

Edward Hurst
Notary Public

FIGURE 3.1 Seamen Protection Certificate. Protection certificates were intended to shield all American sailors from foreign impressment while at sea. For black seamen, such certificates also affirmed their status as birthright citizens of the United States in an era when most authorities otherwise openly debated black belonging. Image courtesy of the National Archives and Records Administration.

efforts of those from whom it had “been wrested.”³ Watkins spoke as a citizen or, as he put it, one of the “three hundred thousand . . . home-born citizens of the United States.”⁴ He also spoke as an educator, and it was his work as a teacher and schoolmaster of the Sharp Street Methodist Church that embodied Watkins’s approach to securing rights in the everyday life of Baltimore.⁵ Across generations, in William Watkins’s words, education enabled “the citizen to fly over the country as it were on the wings of the wind.”⁶

His students embodied Watkins’s vision of what education could accomplish. Among them had been George Hackett, Charles Hackett’s son. George had grown up in Baltimore and married Mary Jane Gilliard, a member of another Bethel Church family, in the fall of 1828.⁷ He joined Baltimore’s small class of African American skilled workers and entrepreneurs. He worked as a waiter and then in 1831 opened his own livery stable. In business, George showcased his education and training by signing his name with a studied flourish. Luck did not favor him, however. In 1837, his stable was washed out by a flood. His horses were killed, and the floodwaters revealed human skeletal remains buried under the stable. George was suspected briefly of trafficking in cadavers, but the charges were dropped. Still, he saw his business washed away, literally. The next year, his only son and namesake died. George Hackett went to sea.⁸

Seafaring was one of the three or four most common occupations among free black men in port cities from Maine to Maryland. Typically, they served as domestics aboard ship, while crew members in other positions were generally white. Going to sea was a strategy by which aspiring families elevated their status. The wages were fair; at least black and white sailors were paid equally. Unlike their white counterparts, who were often transients seeking adventure, African American seamen sought to establish their respectability and leadership at home through service on the sea.⁹ George Hackett became a naval steward in an era marked by racial strife. Naval officials received “frequent complaints” about the “number of blacks and other colored persons [who] entered at some of the recruiting stations, and the consequent under-proportion of white persons transferred to sea-going vessels.” The navy imposed a quota on black sailors, setting the ceiling at 5 percent.¹⁰

Seamen posed a unique set of questions about citizenship. In 1803, congressional deliberations over seamen’s protections had assumed “free persons of color” were protected like all seamen. Then, in the 1820s, some asked: Could a free black man command an American merchant vessel when law required that only citizens could command such ships? Attorney General William Wirt had opined that free black mariners, if not citizens of the state in which they resided, were not qualified to command such vessels. Some southern states passed Negro seamen acts that required visiting black sailors to remain confined aboard ship or in the local jail when in a city other than their home port. Courts approved. This was an awkward circumstance, because other authorities deemed free black sailors to be citizens. Many sailors carried Seamen’s

Protection Certificates, federal government-issued documents that proved their citizenship when in foreign ports. We do not know if Hackett carried such a certificate, but surely some of the men around him did.¹¹

Black Baltimoreans understood the world beyond the port through sailors' anecdotes and through the African American and antislavery press. Editors chronicled the unfolding story of slavery versus freedom in the Americas. Mexico was singled out for having abolished slavery, while opposition was expressed over the prospect of annexing Texas as a slaveholding territory.¹² Cuba detained black travelers accused of exciting "discontent among the slaves."¹³ In Brazil, "enfranchised" former slaves were said to be property owners, professionals, and members of military regiments: "The benefits arising from them have disposed the whites to think of making free the whole negro population."¹⁴ Men like George Hackett held a sophisticated, if incomplete, picture of the dynamics of race and rights beyond Baltimore.¹⁵

In spring 1839, US Navy commodore Alexander Claxton prepared to lead the Pacific Squadron aboard the flagship USS *Constitution*.¹⁶ His orders included shuttling diplomats, suppressing the slave trade, and safeguarding the work of US vessels at work out beyond South America's west coast. As steward to the commodore, George Hackett joined dozens of men preparing the ship. He ensured that the commodore's accommodations were well stocked, carrying wine chosen especially for the voyage to Norfolk, where the *Constitution* was being readied.¹⁷ The steward was a body servant, tending to the commodore's clothes and grooming. He was also a waiter, serving meals, pouring wine, delivering tea when called on, and a butler, attending to the laying out, washing, and pressing of uniforms, and the shining of shoes and boots.¹⁸ Hackett's job as the commodore's steward meant he was present, however quietly, during the dictation of letters, the visits of dignitaries, and the conversations between the commodore and his officers. Space on board was highly regulated by status and rank. Most sailors never saw the inside of the wardroom where officers took their meals and socialized when off duty. Regular seamen lived their lives below deck.

The black abolitionist James McCune Smith penned a lighthearted description of the ship's steward for *Frederick Douglass' Paper*. While the captain "sailed the ship, the Steward hosted her," he wrote. His duties required "no little talent and expertise" and "much headwork" to ensure that the ship was properly provisioned. He was expected to step in when others were unable to perform, becoming parson, lifesaver, or escort for an unaccompanied woman or child.¹⁹ The *Constitution's* administration reflected Hackett's exceptional position. When Captain Daniel Turner accounted for the ship's personnel to naval officials, as he did each month, he was careful to note that the commodore's staff was distinct from his regular crew. It included five people: the commodore himself, and his secretary, steward, coxswain, and cook.²⁰ Hackett's post was more isolated than most, but his station in the commodore's quarters ensured that he received another sort of education.

Following Hackett's journey reveals how he gained new perspectives on race and law. He observed as justice was carried out aboard the *Constitution*. From summary trials and floggings to elaborate court-martial proceedings, the commodore's steward learned about the administration of law. Among the lessons were ones about how, unlike in Baltimore, black seamen elsewhere were competent to testify against white interests. He heard stories of race and rights in foreign port cities, each a counterpoint to his home of Baltimore.²¹ The slow and not always deliberate process of manumission and abolition was under way in the Americas, with free people of color generating consternation and contests over their status. When Hackett finally disembarked in Nantucket, Massachusetts, he arrived in the heart of radical abolitionist culture. Free people of color there were calling for slavery's demise, while they decried colonization and urged men like Hackett to stand firm in Baltimore and insist upon their belonging.

The *Constitution* became a courthouse for the adjudication of disciplinary infractions among crew members during their time at sea. The culprits were invariably white sailors. Black sailors, by contrast, figured in the proceedings as witnesses for the prosecution. Trouble often erupted in connection with episodes of leave that were liberally granted to seamen during the months the *Constitution* patrolled South America's western seaboard. Naval law defined rights and obligations aboard ship and permeated day-to-day relations; from rank and hierarchy to protocol and diplomatic exchanges, law suffused the rituals and routines of the *Constitution*. Thus, rather than being immersed in a lawless space, their time at sea provided mariners with a legal apprenticeship – fragmentary and intermixed with custom – that emphasized the interplay between law and the assertion of rights.²²

Legal proceedings were an exception to the casual racism that characterized life on the *Constitution*. White sailors derided black crew members, especially cooks and barbers, referring to them with sarcasm as “fashionable” and “colored gemman,” a reaction to what were said to be the black men's respectable pretensions.²³ In contrast, disciplinary proceedings leveled the terms on which black and white seamen confronted each other. The frigate's mainmast was termed the “tribunal of justice.” On one occasion, a first lieutenant gathered the crew there to inquire about the pilfering of food. The chief complainant was the owner of the dish in question, who accused two fellow sailors of stealing his much coveted meal of “dunderfunk.” There was assembled a “whole posse of witnesses,” black men being among them. “Swampseed,” an African American cook, shared that the accused were regular food thieves, although he had not seen them lift the dish in question.²⁴ In addition to testifying, black sailors were also called on to witness punishments. Such was the case when four white “liberty men” failed to return from a day's break in the port of Callao, Peru. Ten days later, all hands were summoned to the deck to witness the punishment of the four for desertion and drunkenness. Each received twelve lashes, a sentence typically reserved for black men in US port cities like Baltimore.²⁵

Hackett also observed the workings of complex legal proceedings and the discretion exercised by decision makers. Serious infractions led the commodore to convene courts-martial in cases of internal disciplinary infractions, and courts of inquiry to hear disputes between the ship's crew and civilians. These rested on the application of naval law.²⁶ Preliminary investigations were conducted, witnesses interviewed, and charges presented. Commodore Claxton determined whether a proceeding would go forward. When it did, he formally appointed the officers who would preside as president and advocate general. An 1839 case against James Morris alleged "mutinous conduct" in his aiding another marine, William Bambury, in an assault on an officer. The charges – violation of the "13th 14th and 15th articles for the better government of the Navy" – were signed by Lieutenant J. C. Rich and then transmitted to Claxton. In his letter of transmittal, Captain Daniel Turner appealed to Claxton. Morris had been acting pursuant to orders that required him to protect the prisoner, Bambury. Claxton exercised judge-like discretion, deciding against convening a court-martial.²⁷

Claxton wasted little time organizing a court of inquiry, however, when he received a letter of complaint from Brazil's minister of foreign affairs to the Rio-based chargé d'affaires of the United States. Four officers were appointed to the inquiry: three presidents and an advocate general. The defendant, Commander French Forrest of the USS *St. Louis*, stood accused of negligence during a stopover in Rio, during which the Brazilian brig *Amisada* had suffered "immense damage." Claxton directed that Forrest answer the charges, and the tribunal was ordered to obtain testimony, record the facts, and prepare a written report. Over the course of three days in December 1839, Forrest's performance was evaluated. The final report's recommendations: "The damage done to the Guard vessel was very trifling and [the court] acquits Commander Forrest of negligence."²⁸ Power was expressed through law and through equity in the *Constitution's* halls of justice.

Hackett also learned lessons about law in quotidian ways, absorbing them as he performed his duties within the inner workings of the flotilla's administration. On many days he was a silent witness to private conversations, pointed deliberations, and the formal execution of naval proceedings. On other days, he looked out from a distance at life in various port cities, each of which governed the lives of free black men and women by way its own history and its circumstances.

The first leg of the *Constitution's* voyage was a diplomatic mission, shuttling Powhatan Ellis, the new United States minister plenipotentiary, to Mexico. The ship's time in port at Veracruz was just long enough to introduce Hackett to protocol and pomp. Ellis and his retinue received a seventeen-gun salute with the crew in uniform, positioned like sentries.²⁹ The *Constitution* departed early the next morning, cutting across the Gulf of Mexico bound for Cuba.³⁰ Arriving on July 3, the captain signaled for a pilot ship and then navigated the narrow harbor entrance. From above, the Morro and Punta forts watched over

a harbor some described as the “safest, best defended, and most capacious in the world.” At one end were the wharves of Havana that serviced merchant ships. Just opposite sat “the village of Casa Blanca, the notorious resort of the slavers” that frequented the Cuban port. Between the two there was space for several hundred ships to rest at anchor.³¹ The *Constitution* took its place among them.

Hackett, along with the other black members of the *Constitution*’s crew, was confined aboard ship while they were in port. As a black correspondent to the *Colored American* had reported: “No colored seamen are allowed to come to this Island from the United States; if they do they are locked up in prison and tried for their lives; if convicted they are executed or else sold into perpetual slavery; if not convicted they are kept in prison until the ship is ready for sea, and then sent on board.”³² Hackett likely interacted with other black men, among them slaves, who carried goods to the frigate.³³ Otherwise, he was left to make sense of the place from the deck. One sight spoke volumes, however. Across the harbor was the HMS *Romney*, a hulk, no longer seaworthy, that served as a temporary hold for Africans seized by British antislavery patrols. Its free black British sailors, like Hackett, were barred from entering the port of Havana. The *Romney* provoked extended diplomatic wrangling, and its presence in the harbor aimed to draw attention to the dilemma that free black sailors confronted.³⁴

Leaving Havana, the *Constitution* set her sights on the Pacific. It was a long journey that would take the frigate around Cape Horn to Valparaiso, Chile, but not before a respite in Rio de Janeiro.³⁵ Two weeks in Rio de Janeiro meant shore leave for many crewmembers who had not left the *Constitution*’s deck since New York. Sailors were allowed to disembark overnight, with their comings and goings carefully accounted for.³⁶ Hackett, however, remained confined to the ship, not by force of legal restrictions but because of his duties. Claxton’s quarters were busier than usual, with diplomats and local dignitaries being ferried out to the frigate to make formal calls on the commander. Representatives of Sardinia, Russia, Britain, and the United States all paid formal visits to Claxton.³⁷ What might Hackett have learned from those who took liberty in Rio? The city was not unlike Baltimore, with a large free black population – the largest of any city in the Americas.³⁸ Free people of color in Rio were citizens by law. Still, laws constrained their rights.³⁹ Brazil’s freed people had their own stories about families, work, property, businesses, and associational life, and their concerns paralleled those that black men and women wrestled with in Baltimore. Black laws aimed to fix their status. But in contrast, Rio’s free people of color were also citizens who never faced the threat of removal from Brazil.

Hackett’s time aboard the *Constitution* was cut short in March 1841. Commodore Claxton perished during an extreme bout of dysentery.⁴⁰ Hackett prepared to return to the United States; the commodore’s death terminated any need for his services. Special arrangements were made for him to board a

whaler out of Valparaiso, carrying with him 100 pounds of bread, 1 pound of port, and 5 gallons of vinegar.⁴¹ Before he left, the steward had one last occasion to take part in naval maritime culture when he joined the commodore's funeral retinue. When Claxton was laid to rest in Valparaiso, it was a diplomatic affair. A procession ushered the body from the port to its final resting place, led by the ship's band, in uniform, with "the somber draper of death pendent from each instrument." Following were the marine guard, the chaplain, and eight naval officers who served as pallbearers. And then came Hackett and the rest of the commodore's staff, "body servants . . . their downcast countenances proclaiming how severely they felt this sudden and unexpected bereavement." Only after these men did foreign consuls and naval captains join the line.⁴² The following day, Hackett boarded the whaler *Ann*, bound for Nantucket.⁴³

There was no easing back into questions of race and rights for Hackett. After three and a half months at sea, the *Ann* arrived in Nantucket.⁴⁴ As he disembarked, Hackett stepped into a fray, the port's narrow streets teemed with the rhythms of African American public culture and antislavery activism. There, just months before, a young Frederick Douglass had delivered his first address to a predominately white antislavery audience. Agents and correspondents for the black and antislavery press, including Edward Pompey and George Bradburn, made their homes there. Above a general store was Nantucket's Anti-Slavery Library, which offered the public, "free of expense," publications intended to further the cause.⁴⁵ Perhaps Hackett heard the talk of Douglass's speech that still lingered on the island, or borrowed copies of the *Colored American* or the *Liberator* to catch up on events closer to home.

He need not have looked far because Maryland was in the news. The state's ongoing colonization movement drew the attention of black New Englanders, who followed such events closely. In New Bedford, Massachusetts, black men and women had just recently convened a meeting to decry the work of the Maryland State Colonization Society. They spoke sympathetically about the special plight of black Marylanders, "over whose heads the storm of persecution [was] now gathering" as they faced the threat of "expatriation from their native land." Black New Englanders counseled Marylanders "not to be intimidated by threats."⁴⁶ Still, Hackett would have learned that the threat of removal remained alive in his hometown.

On the table in Maryland was not a proposal for voluntary colonization but something more threatening. Maryland's colonization advocates were again pressing for the forced removal of black men and women from the state. Radical colonizationists had put forward a strongly worded resolution that was devoid of benevolence, editors of the *Colored American* reported. Lawmakers put forth a cynical lament: "It is most earnestly hoped that the free colored people of Maryland may see that their best and most permanent interests will be consulted by their emigration from this State." And then they backpedaled from an approach to colonization that was voluntary: "While this Convention would deprecate any departure from the principle which makes colonization

dependent upon the voluntary action of the free colored people themselves – yet, if regardless of what has been done to provide them with an asylum, they continue to persist in remaining in Maryland.” Black Marylanders were mistaken if they expected to win “an equality of social and political rights.” Forced removal was on the near horizon, lawmakers warned: “THEY OUGHT TO BE solemnly WARNED, that, in the opinion of this Convention, a day must arrive, when circumstances that cannot be controlled, and which are now maturing, WILL DEPRIVE THEM OF THE FREEDOM OF CHOICE, and leave them no alternative but removal.”⁴⁷

Hackett faced a hard choice, and black New Englanders pled with him and men like him:

Let not a soul leave; stay by, and meet the hour like men, calmly, peaceably, firmly; it will work your own, and the salvation of millions. They will never attempt, only three to one, as they are, a removal by force; they cannot do it, and nobody will become accessory to so foul a deed, as to come in and give them aid. Besides, humanity and God are against them.⁴⁸

He might have remained in Massachusetts, but instead Hackett headed home, heeding the urgings of black activists across the North: “Stick to the ship, and die where you were born.” That was precisely what he did.⁴⁹ With a sea-borne tour of the hemisphere’s ports, new understandings about race and law, and a close look at the radical abolitionist culture of the North behind him, Hackett returned to the streets and alleys of Baltimore.

The City Courthouse

Everyday Scenes of Race and Law

Back in Baltimore, George Hackett took time to reestablish his connections after two years at sea. Some things had not changed very much. His parents, Charles and Charlotte, were in their home on Gay Street.¹ He likely also found there his wife, Mary Jane, and the couple's young daughters, Eliza Ann and Catherine Henrietta, though surely his girls were taller and had progressed in their studies. His city also had changed. Walking the ten short blocks from his home to Bethel Church, he could see how a scheme that mixed the push of colonization with pull of emigration had transformed his local congregation. In Hackett's absence, a group of just over 250 black Methodists had left for Trinidad. They were the latest wave of free people of color to emigrate, doubting that claims to citizenship would amount to anything in the United States. New England's black activists had been right to worry that black Marylanders would abandon their homeland when faced with threats of forced removal.² The departures of black Baltimoreans reflected how that city's residents remained vulnerable to emigration enticements even as New Yorkers resolutely resisted schemes to draw them away from the United States.

Planters in Trinidad and British Guiana (Guyana today) aimed to draw black laborers from the United States to their fields. Britain's abolition of slavery, and the anticipated end of the apprenticeship scheme that followed it, produced a new demand for workers. Colonial officials promised free passage and employment assistance, and sent agents to cities from Boston to Baltimore to promote migration.³ They explained the labor conditions and climate. Of the political and legal status of black migrants, emigration agents described a world in which race did not constrain status: "No exclusive privilege now elevates a white man above his colored brethren. A Council of Government consisting of twelve gentlemen in which white and colored are mingled, are appointed by the queen . . . Judges are also appointed . . . [One] of these judges at the present time is a colored man."⁴ Black journalists echoed this assessment: "The islands

To the Honorable the Judges of the Orphans
 Court in Baltimore County
 We the undersigned recommend that
 Cornelius Thompson a free negro man of the City
 of Baltimore receive permission to be absent from
 the State of Maryland more than thirty days, he
 being a respectable man and desiring to be absent
 during the Summer months ^{and on part of the summer} in the State of Virginia
 for the purpose of serving as a waiter at the watering
 places there.

A. B. Taney
 J. M. Campbell
 Anne Taney

FIGURE 4.1 Travel permit application for Cornelius Thompson. Black men and women became more like rights-bearing citizens when they secured the travel permits as required by state black laws. Cornelius Thompson's application, pictured here, appropriated the authority of Chief Justice Roger Taney, his wife, Anne, and his son-in-law J. Mason Campbell, along with the power of the court, to ensure that Thompson could freely travel for work between Maryland and Virginia. Image courtesy of the Maryland State Archives.

of Hayti, and Trinidad are open to us; there [are] no distinctive persecuting laws [that] present insurmountable barriers to our advancement.”⁵

Baltimoreans were not wrong to give emigration serious thought. Maryland's pro-colonization legislators encouraged this, and free people of color felt the push. Lawmakers eased the way to Trinidad and Guiana with a bill that gave free people of color the right to travel to foreign locales and, “if not pleased, to return” to the state.⁶ They needed only “satisfy the orphans court . . . that they are visiting said places with a view of ascertaining whether they are suitable for emigration or settlement.”⁷ Annapolis legislators subsidized the earliest explorations by black Marylanders, allocating monies set aside for colonization to support “two black men of Annapolis, to enable them to visit Trinidad, with a view to ascertain its character, as a place for colored emigrants.”⁸ Emigration to the Caribbean did little to further the state colonization society's Liberia project. Still, its end result – the voluntary exit of free black people from the state – was consistent enough that it warranted public support.

Public meetings on emigration were called in African American houses of worship, the only large-scale political meetings convened by black Baltimoreans

in this period. A November gathering at Bethel Church selected two lay leaders – Nathaniel Peck and Thomas Price – to undertake an exploratory excursion and then report back to the community at large.⁹ They were supported by Baltimore’s mayor, S. C. Leakin, and three judges: Nicholas Brice, W. D. G. Worthington, and U. S. Heath. By early spring, ads soliciting emigrants appeared in local papers.¹⁰ A “government agent” for Trinidad was reported to be in Baltimore, “making arrangements for dispatching a vessel with emigrants.” Local papers published a flattering portrait of life in the British colony that was said to draw on the voices of early emigrants themselves.¹¹ Crowds of those eager for a chance at life in Trinidad convened. An April 6 meeting was called at the Sharp Street Church, where George Hackett’s father-in-law, Nicholas Gilliard, presided. A Trinidadian representative underscored that “slavery is totally and forever abolished in Trinidad.” Anticipating questions about race and rights, he reassured black Baltimoreans: “In the Island of Trinidad you will enjoy every privilege, and your color will make no distinction . . . There are seventy-six schools where your children can be educated, free of charge.”¹² One week later at Bethel Church, Peck and Price, who had returned, related their findings to “a densely crowded house [in which a] large number could not get near the door.” The two promised to publish their observations in pamphlet form.¹³ Among their findings were observations about race and rights. In Guiana, for example, Peck and Price reported observing criminal court proceedings during which they noted the role played by three assessors “who must be tax payers; [they] are called to take their place in rotation, without regard to color.” They went on: “Many of the clerks in the public offices are coloured; also, tellers in the bank.”¹⁴ Emigration might lead to economic independence and even prosperity. It also promised equal rights.

By mid-April migrants from Baltimore were boarding ships by the dozens. There was the brig *Porpoise*, with 70 “colored emigrants.” On another, 120 had booked passage.¹⁵ The brig *Northerner* left with 93 people on board.¹⁶ The *Belvidera* sailed with 135 “colored emigrants.”¹⁷ On May 22, “upward of one hundred emigrants left . . . for Trinidad.”¹⁸ Among the African American passengers’ final acts was one that suggested how the prospective emigrants folded a bit of legal savvy into their preparations. Each appeared, often in a family group, before the clerk of the city court in Baltimore to secure a travel permit. No such permission of the court was required to simply leave Maryland. But someone had advised the travelers that if, however, they had even a distant hope of returning to Baltimore, they would need a permit to do so. By the score, those bound for Trinidad hedged their bets with small slips of paper that affirmed their enduring claim to place, even as they would venture far from Maryland.¹⁹

Emigrants’ letters home showed that conditions in Trinidad were less than ideal. Still, missives to loved ones in Baltimore explained what it meant to live as equals before the law. Edward Crew, for example, wrote to his wife, Belinda, about seeing black men in military uniform: “We had also the pleasure

on Sunday afternoon, of seeing the soldiers in the barracks, there are some hundreds of them, all colored." Richard Freeman explained how black men were lawmakers and ships' pilots, positions denied to them in Maryland: "You will here be in a country of equal laws, and have the satisfaction of seeing them administered in part by men of your own complexion . . . When we met the light boat in the river we had the satisfaction of taking the Pilot on board, who was a colored man." Edward T. Crew wrote: "We find no invidious distinction here, either in civil, social, or religious point of view, on account of color at least." Emigrants' testimony brought the shortcomings of free blacks' status in Baltimore into sharp relief.

Black Baltimoreans would continue to emigrate to Trinidad and Guiana, making them the targets of Northerners' ridicule. In January 1841, a Baltimore convention met at the Sharp Street Methodist Church to debate emigration, and they heard from at least one returnee. The meeting's conclusion was to encourage "our colored brethren who may be dissatisfied and discontented with their condition in their country, to accept the offers held out to them."²⁰ Emigration remained a viable alternative. At the same moment in New York, another convention resolved: "We consider emigration to the Island of Trinidad, as only second in its nature to colonization."²¹ That is, emigration, in the minds of these Northern activists, was consistent with the aim of colonizationists who wished to rid the country of free people of color. Baltimoreans did not agree, and they organized their persons and their property for the journey to Trinidad and British Guiana.²² In New York, commentators mocked them: "A party of forty or fifty colored persons left Baltimore last week for Trinidad, determined to make it their future residence. They had better have gone to Iowa, or staid [*sic*] at home."²³

Even in Baltimore, emigration was the choice of only a few in the end. Most black Baltimoreans remained. Those who stayed knew that unjust laws required a response and that new tactics were in order. Writing under the pen name Amalgar, a local activist called for yet another emigration meeting, all the while lamenting Baltimore's loss of optimism: "There are many among us who cherish the fondest hope with a warmth of heart for the welfare of Maryland, and would sooner part with life itself than her soil and friendly white inhabitants." But there was no masking the depth of their degradation: "We are repeatedly threatened with laws too oppressive for any honest man to bear who has tasted the sweats [*sic*] of limited liberty." Those who remained assumed a heavy burden: "It behooves us, as a debt we owe to God and the millions of souls yet unborn to us, yea, our off-spring, to do all in our power to secure them their liberty in a land where reason has triumphed over prejudice . . . where none shall make us afraid or ashamed."²⁴

Amalgar went to some lengths to explain why Baltimoreans would choose emigration, responding in part to criticism coming from New York. Black activists in the two cities were split on the issue and had sparred in the pages of the *Colored American*. From Baltimore, Nathaniel Peck and Thomas Price

challenged New York's Charles Ray for his doubts about migrating to the British Caribbean: "We hope there will be relaxation of emigrants . . . for we can there enjoy that which law denies us here."²⁵ The word "here" is key to understanding this rift. The standing of Baltimoreans differed from that of New Yorkers. The former fought for citizenship as a shield against removal, while the latter were second-class citizens claiming voting rights. The New Yorkers fired back, accusing the Baltimoreans of having been bamboozled by Caribbean planters who had enticed them with fine meals and accommodations during a fact-finding mission. Ray labeled Peck and Price "simple-minded men [and] easy victims."²⁶ An ordinary difference of opinion was reasonable; reports from Trinidad and British Guiana fueled arguments for and against emigration. But this was no simple difference borne of the evidence.

African American political conventions had resumed in New York, and throughout the North, by 1840. The subjects of emigration and colonization were taken up, largely in the spirit of condemnation. The primary focus of these meetings was, however, political rights. They were laboratories for the development of full-fledged arguments for black citizenship. Meeting in Albany in 1840 and 1841 and then Schenectady in 1844 and Geneva in 1845, black New Yorkers asserted their rights as "native born citizens" and opposed all distinctions among state citizens "growing out of complexion."²⁷ Here they ridiculed what was arguably an irrational distinction between black and white New Yorkers in the state constitution. At the same time, the delegates painted themselves as like others born in the state, and objected to being ranked below "foreigners naturalized." Such discrimination, they declared, "oppressed those who fought and bled for their country's freedom, and thereby were entitled to the unrestricted enjoyment of its political institutions." Black New Yorkers grounded their claim to a right of citizens – the vote – in their labor and their military service.

Colonization was singled out for special condemnation in New York as a system "calculated to throw us into a state of restlessness . . . break up all those settled habits which would otherwise attach us to the soil, and . . . furnish our enemies with arguments to urge our removal from the land of our birth." God, they explained, intended that "here on this continent we are to remain, citizens of this republic."²⁸ Even in a state that granted African Americans a baseline degree of citizenship, activists guarded against the possibility that they might be removed from the state and from the nation. And an argument that was largely grounded in state citizenship was extended to encompass national citizenship as well.

The refrains "we are Americans" and "we are citizens" echoed in conference throughout the North.²⁹ Birthright figured importantly – delegates frequently characterized their status as that of native-born citizens. Conventions were an opportunity to convert white allies to this view. "We beg leave to submit some proofs which we think you will not hastily set aside," remarked the authors of a Troy, New York, convention address. A history lesson followed. First there

were the Articles of Confederation from which the qualifier “white” had been purposely omitted when providing for the privileges and immunities of citizens. In 1803, congressional deliberations over seamen’s protections assumed “free persons of color” were protected like all seamen citizens. They proffered evidence of military service in the Revolutionary War, and the endorsement of lawmakers from Rhode Island, Pennsylvania, and New York confirmed the valor of black soldiers. Service during the War of 1812 was similarly invoked. For these activists, a potent mix of birthright, foundational texts, legislative deliberations, and military service both affirmed their citizenship and justified their entitlement to the franchise.³⁰

These ideas echoed throughout the free states. At Pennsylvania conventions there was an added urgency. The end of the 1830s had brought two major defeats. The state’s 1837–38 constitutional convention had disenfranchised black men, for the first time in Pennsylvania’s history inserting the word “white” into voting provisions.³¹ And in deciding the case of *Hobbs, et al. v. Fogg*, the state’s high court had concluded that African Americans were neither “freemen” nor citizens under the state’s constitutional scheme.³² Delegates to Pennsylvania’s black conventions pushed back, pressing for political rights. “If we are asked what evidence we bring to sustain our qualifications for citizenship, we will offer them certificates of our BIRTH and NATIVITY,” declared activists gathered in the state capital of Harrisburg.³³ In New Jersey, activists sought to overturn a provision in the state constitution that limited the vote to white men, terming themselves citizens with a somewhat matter-of-fact air.³⁴ Connecticut activists met in 1849, declaring the vote was “OUR RIGHT, as native born MEN, Citizens of the great Republic, and members of the Commonwealth of Connecticut.” Among their authorities was *State v. Crandall*.³⁵ In Michigan delegates to an 1843 Detroit convention declared themselves native-born citizens, invoking the state and federal constitutions, the Declaration of Independence, and black men’s service in the Revolutionary War and the War of 1812.³⁶

Baltimoreans, though they had been originators of such conventions, were not participants in the conventions of the early 1840s. The final year that Baltimore sent delegates to a national convention was 1835. That year delegates Nathaniel Peck and Robert Cowley had represented the city, and the full convention had openly encouraged Marylanders to remain active. A communication from Baltimore’s Phoenix Society was read during the proceedings, and the group was encouraged to appoint delegates to the national organization.³⁷ But when conventions resumed, Marylanders did not rejoin the movement. Some key activists had shifted their allegiances. Peck, for example, who represented Baltimore and served as a national convention vice president in 1835, was leading emigrants to the British Caribbean by 1840.

Differing circumstances created distance between New York and Baltimore. Maryland’s legislature set in place harsh restrictions that likely influenced the content of the black politics in the state. Talk of emigration and colonization was encouraged. And free black people in possession of antislavery materials

were subject to an especially harsh penalty: "Any free negro" was prohibited to "knowingly call for, etc., any abolition handbill, etc., having a tendency to create insurrection, etc., among the people of color." A conviction carried with it a sentence of ten to twenty years.³⁸ Regular lines of communication frayed. Restrictions on the circulation of abolitionist literature ensured that the Northern press did not reach black residents of Baltimore to the degree it once had. In the late 1820s New York's *Freedom's Journal* had multiple agents active in Baltimore. William Watkins had acted as an agent for Boston's *The Liberator* in 1831.³⁹ Things had changed by the time the *Colored American* was first published, in 1837. Its Baltimore agent was a Philadelphia minister, Stephen Gloucester, whose territory included Maryland, Pennsylvania, Delaware, and western New Jersey.⁴⁰ There is no sign that Gloucester actively solicited subscriptions in Baltimore. To do so would have entailed great risk to both Gloucester and his readers.

Local circumstances demanded local strategies. If George Hackett was to take up the helm of leadership from his father, it would not be by way of conventions calling for slavery's abolition or civil rights. He did find another way, however, and an 1844 encounter in the Baltimore courthouse suggests how. That summer Hackett was party to an assault case, a routine proceeding in a city where sailors, black and white, were regularly hauled before local authorities after a fight. Still, Hackett's first appearance in the Baltimore courthouse was highly unusual by the standards of the day. He was the complainant, not the defendant. Hackett charged a white man named John Pitts with assault. Between white men, such confrontations were routine and the charges typically dismissed. Not so in Hackett's case: "State v. John Pitts, charged with an assault and battery upon George Hackett, a colored man. Fined \$1 and costs."⁴¹ What had transpired we cannot say. Whatever it was, Hackett sought redress. He secured the assistance of a watchman or sheriff and charged Pitt with a criminal offense. Pitts was tried, found guilty, and then fined a customary \$1 plus court costs.

Hackett had sworn out a complaint, testified against a white man, and then won a modest judgment. He had not accomplished this alone. Hackett enlisted the aid of a sheriff, then conferred with a clerk over the swearing out of a complaint, and finally followed the lead of the state's attorney in the courtroom. In the courthouse, blunt racism might be kept at bay long enough for a jury to find a white man guilty of assaulting an African American, he learned. This insight was one that Hackett would wield strategically in the years to come. Black Baltimoreans could engage with the local legal culture and, through its rituals and rules, secure modest but potent rights: to sue and be sued, to testify, and to be secure in their persons and their property.

Hackett's disagreement with Pitt introduced him to a scene that was central to the arbitration of race and rights in Baltimore: the city courthouse. It was at once a symbol of civic pride and grandeur, and a crowded, fraught venue that strained to contain the tensions that litigants carried with them. It was

also a crossroads where working people and the gentry, African Americans and European immigrants, all crowded together in courtrooms, offices, and hallways. When they listened, courthouse visitors heard vivid tales of life in the city.

Lawmakers had always envisioned the city courthouse as an embodiment of state and municipal power. The 1773 courthouse stood on a bluff overlooking Jones Falls, the river that winds through Baltimore, giving the building prominence – it could be seen at a distance from all directions. Street-level observers encountered a whipping post and pillory outside the courthouse, signs of how legal authority was constructed, in part, through force. The court relied on its proximity to life on Baltimore's streets and an audience to achieve its intended effect.

Early nineteenth-century changes were fueled by new thinking about law and its place in a growing urban center. Baltimore's development into a commercial port fed the explosion of its legal culture. The city's population doubled between 1790 and 1800, and so did the demands on the courthouse. By 1806, the state had commissioned a new building for the Calvert Street site. This signified Baltimore's new status as the nation's third largest city, having surpassed in population Boston to the north and Charleston to the south. And it announced the dawn of a new era for the city's legal culture. The old, awkward brick structure was replaced with a five-story high building of brick and marble, made all the more imposing by the addition of Ionic columns and a domed cupola. The architect was George Milleman, described by one city chronicler as a "self-educated" man.⁴² Had Milleman done the courthouse justice? One visitor questioned the architect's judgment, declaring that he had "placed the principal front of his building on the declivity of a steep hill in Lexington-street, and the end of the building . . . where the front certainly ought to be." Still, he conceded that the "interior arrangements are so spacious and commodious as to give it the reputation of being the most perfect courthouse in the United States."⁴³ The courthouse's exterior received a boost in 1814 when city leaders placed a battle monument in the adjacent square. Designed by local architect Maximilian Godefroy, Baltimore's tribute to local veterans of the War of 1812 was created to reflect the spirit of popular democracy.⁴⁴ When the thirty-nine-foot-high pedestal of a work titled *Baltimore* was finished in 1822, the new Monument Square amplified the courthouse's presence and further incorporated it into the city's civic culture.

In 1835 the courthouse was remade yet again, though not exactly by design. This time a fire preceded the transformation. The episode had been dramatic and nearly catastrophic. At 11:00 a.m. on a cool February morning, passersby noticed flames emanating from the courthouse cupola. The structure's height made it difficult for fire fighters to reach the blaze, and a few were injured in the battle. The courts, including the grand jury, were in session, but everyone escaped the danger. Nearly as important were the records, which were saved

by fireproof rooms and the quick thinking of the clerk, who carried bundles of documents in his arms as he fled the burning structure. One newspaper lamented: "The court house was one of the best built and extensive, and noble buildings of its kind – the ornament and pride of our city. Its destruction is a great public loss."⁴⁵ Through restoration and renovation after the fire, lawmakers would take the opportunity to enhance the cultural importance of the courthouse to life in Baltimore City. A commission was appointed to oversee the repairs, and the city and state paid generously to rebuild and improve its hall of justice.⁴⁶

Inside the courthouse, African Americans were regulars. Often they were the subjects of criminal proceedings. In 1850, for example, 578 African Americans were convicted of criminal charges in Baltimore, representing nearly 25 percent of all convictions in the jurisdiction that year.⁴⁷ These cases considered a broad range of offenses: unpaid debts, breaches of the peace, assault and battery, bastardy, aiding runaways, and the selling of liquor on Sunday. And as the cases entered the courthouse, so too did the social worlds of those involved. Stories of commercial transactions that led to unmet debts, disagreements in homes and in public places that led to physical confrontations, intimate relations that led to the births of children, antislavery politics that led to the sheltering of fugitives, and leisure time activities and the accompanying consumption of alcohol all made their way into the building's hallways, offices, and courtrooms.⁴⁸

The courthouse was a public place where Baltimore's public gathered. Although its placement on Monument Square, with its grand approach and long vantage point, set it apart from the cityscape, at the same time it was a scene for the enactment of civic rituals, ensuring that the courthouse was more than a distant hall of justice. It was a central figure in Baltimore's cultural landscape. On an ordinary day, the space teemed with foot traffic, carts, and the vans that transported prisoners to the penitentiary. Hucksters plied their goods while various sorts of speechifying typically drew modest crowds of a hundred people. Monument Square was the site for so-called town meetings, political conventions, and pageants. To venture there with a grievance or a bid for status was to take a place on Baltimore's main stage.

Some courthouse rituals were less than laudatory in the eyes of free black Baltimoreans. There were, for example, those that played out at the courthouse door. Court-ordered auctions of property and people were conducted in that liminal space between the bustle of the city streets and the cool grandeur of the courtroom. The steady cadence of the auctioneer's call punctuated such occasions. Confiscated houses, lots, and household goods were sold to the highest bidder. So were free African Americans – those who had been convicted and sentenced to be sold out of the state for a term of years.⁴⁹ They often stood alongside enslaved men and women, as executors disposed of those said to be property in persons and the state disposed of those found to be fugitives.⁵⁰ Even for casual passersby, these Monument Square scenes – of judges on the

political stump and African Americans on the auction block – suggested how legal culture was intimately intertwined with life in Baltimore City.

Though deeply embedded in the city, the courthouse was never simply a local place. The people who passed through its doors ensured that its work was tied to a broader culture of race and rights. It was about a hundred miles from Baltimore to the US Supreme Court in Washington, DC. But the legal claims of free black men like Baltimore's Cornelius Thompson narrowed the distance.⁵¹ If asked how his travel permit came to bear the signature of Roger Brooke Taney, Thompson was ready to explain. In July 1845 Thompson was preparing to leave Maryland in search of work at one of the region's summer resorts. Virginia's nearby natural springs were a popular destination for Baltimore's elite, who enjoyed the lively sociability and curative effects of the region's spas. Attorney George Brown, later mayor of Baltimore, wrote to his law partner Frederick Brune about his time at White Sulphur Springs, in what is today West Virginia. Brown was in the company of his sister Clara, who was seeking out the "healing waters" of the place. He described to Brune how lines of professional life and sociability crossed during summers at the spas. Gathered were some "900 people," including men from the city's merchant and legal elite, including lawyers Orville Horwitz and S. Teackle Wallis.⁵² This same resort was the summer vacation place of Roger Taney and his family throughout the 1850s.

These "watering places" offered work to free black men and women, who served meals, provided entertainment, and performed housekeeping duties for plantation and city dwellers who took refuge in the hotels, cottages, and guest houses during the hottest months. Before heading off to take up this seasonal work, Thompson had one required stop: the Baltimore City courthouse. He knew that, generally, state law barred free African Americans from reentering Maryland once they had crossed the state line. Thompson also knew that a travel permit could shield him against kidnappers.⁵³ He would have to secure a permit at the courthouse if he hoped to avoid a troubled fate.

Thompson's trek from his home on Tyson Street to the courthouse was short, fifteen minutes on foot along crowded streets and alleys to Monument Square. Perhaps he had his application folded in a breast pocket or tucked in a satchel.⁵⁴ Thompson's application bore three signatures, that of Chief Justice Taney, his wife, Anne P. C. Taney, and their son-in-law, J. Mason Campbell. As he handed his application to Orphan's Court clerk David Perine, Perine may have paused knowingly.⁵⁵ He knew Taney's signature well; when the chief justice was away from Baltimore, Perine managed his business affairs. Perine was also familiar with Thompson's purpose. During the summer of 1845 alone, he issued nine such travel permits to free black men pursuing work at the region's resorts.⁵⁶ Thompson left the courthouse, permit in hand, having joined the ranks of the many other free black men and women who, after adding the courthouse to their itinerary, had permission to travel granted to them by the court.

It was not the first time that Thompson had sought Taney's alliance in a courthouse matter. He had first turned to him more than a decade earlier, in 1832, when, as a slave, he arranged to purchase his own freedom. Thompson had struck a bargain with Taney's former Frederick County neighbor Daniel Hughes: his freedom in exchange for \$450. But Thompson had only \$150 in hand. He hoped that Taney – then US attorney general – would lend both money and legal advice. Taney obliged. First, he wrote to Hughes's agent to say he knew Thompson, who was "a good boy" (although Thompson was nearly thirty years old). Taney proposed to pay the balance due of \$300 by check in exchange for a bill of sale. He intended to "at once execute a deed of manumission." But Taney was clear that this was a business transaction. He and Thompson had arrived at an understanding: "Cornelius and I will agree on the time he is to serve," meaning that Thompson would compensate Taney for his freedom by serving a term of years.⁵⁷ Taney then brought to bear his lawyer's expertise. Better to avoid Maryland's local courthouses, he advised. State law prohibited Thompson's manumission under the circumstances.⁵⁸ There was a way around Maryland law, Taney advised, directing that matter should be formalized in the District of Columbia.⁵⁹ As a result of their arrangement, Thompson won his freedom papers and Taney gained a bound servant. It was a relationship that allowed for negotiation and exchange in a way that approached collaboration.⁶⁰

By the summer of 1845, Thompson planned to travel. When he approached Taney about signing a travel permit application, the two men had long been allied, and layers of familiarity, exchange, and experience underlay their bargain. But it was an uneven alliance that rested on fragile agreements and conflicts that brewed just below the surface. They reached an accord about the travel permit, and at first glance, the permit appears to reflect a convergence of interests: Thompson's in finding more lucrative employment, and Taney's in ensuring good service for elite patrons in Virginia's resorts. And in light of their long-standing alliance, Thompson's access to the Taney family was affirmed. For Taney, his dealings with Thompson reinforced his self-asserted image as a benevolent figure in the lives of free African Americans.⁶¹ The document papered over fault lines between the two men. There is much to suggest that Thompson and Taney differed over what a travel permit meant. Did the permit suggest that Thompson held a right or a privilege?

Taney's views are most easily examined. His correspondence and opinions, published and unpublished, place Thompson's travel permit in an illuminating context. Since 1841, Taney had been working out his ideas about a constitutionally derived right to travel between the individual states. What of men like Cornelius Thompson? Taney recognized the right of free white citizens to traverse the country, but free black people were a different category. Thompson might secure a travel permit in the local courthouse. Indeed, Taney might aid him in such a proceeding. Still, in the chief justice's view, Thompson's permit represented a privilege rather than a right, one that could be revoked, violated, or otherwise impaired by the state at will.

Thompson's perspective is more difficult to unearth. Only from the records of those things that he did is it possible to draw conclusions about how he thought about them. Did Thompson understand his travel permit to be a right or a privilege? Surely he hoped it was more akin to a right. Adorned with distinguished endorsements and a judicial imprimatur, his permit was intended to stave off aggressors, including would-be kidnappers and profit seekers. Thompson expected the terms of the permit to be unassailable, shielding him from imprisonment, fines, and sale into servitude, even if such protections existed only for the permit's duration. In this expectation, Thompson lived like a man who possessed rights – rights he was prepared to secure in the local courthouse. This was consistent with the other ways that Thompson used law to demonstrate his belonging in Baltimore. In another aspect of his life, Thompson was a vestryman at the St. James Protestant Episcopal Church, a black-led congregation, charged with taking care of the congregation and its property, including a modest church building on the corner of North and Saratoga Streets.⁶² Thompson was also part of Baltimore's associational economy and its networks of debt and credit. In 1849 when a man named Henry Gibson sought insolvency relief, Thompson served as a court-appointed trustee, collecting and distributing Gibson's assets on behalf of the court. Thompson had been at the 1852 black emigration convention, where he joined in with the delegates who called into question the failure of Maryland's new constitution to recognize the citizenship of black Marylanders. Thompson was a modest property holder, and in 1855, after his death, his family would depend on the court's register of wills to administer his estate. Even if an explicit declaration of Thompson's rights was not forthcoming from lawmakers, he nonetheless used the local courthouse to exercise the rights to travel, own property, and sue and be sued.

When lawmakers adopted black laws, they did so in an effort to control and confine the lives of free black Marylanders. Some saw people of color as indolent burdens on the state. Others believed that free African Americans would inspire uprisings among enslaved people. In combination with colonization schemes, black laws pressured some black Baltimoreans to abandon their homes and the state. Others stayed and remained subject to the laws' requirements. When they entered the courthouse, what transpired was not at all what lawmakers had intended. Black petitioners looked more like rights-bearing people than the degraded subjects they were intended to be. They took part in courthouse culture. They secured the support of leading white men. They navigated the clerk's office and the courtroom. They assembled the endorsements of lawyers and judges into an authority that ensured they would live, in small but important ways, unmolested. On the city's streets, with court-issued papers in their pockets and pouches, black Baltimoreans looked more and more like persons with rights.

Between the Constitution and the Discipline of the Church

Making Congregants Citizens

Baltimore's Bethel Church was four years into a heated dispute over money, leadership, and styles of worship by the spring of 1849.¹ On a Thursday afternoon in late February, courtroom tensions boiled over during a church trial when a trustee charged with misuse of church funds was found guilty. Wielding a bag of nails, church member Serena Richfield, whose husband, Aaron, was among those accused, attacked the Reverend Darius Stokes. Stokes escaped serious injury, although his brother Robert suffered a fractured skull and the minister in charge, Daniel Payne, was also assaulted. Just days later, a supporter of Stokes and Payne wrote to a local newspaper explaining what had transpired. The assault on Payne was unwarranted, his supporter wrote; the minister had brought much-needed reform to the congregation. Stokes, "a respectful, obedient, honest drayman," was also unjustly singled out. His opponents had tried "with all their ingenuity" to "dislodge" Stokes, but he held his ground, "resting with one hand upon the Constitution and with the other upon the Discipline of the Church."² Grounded in this foundation, his advocate explained, Stokes had held fast against an assault on the integrity of both his person and the church.

Stokes was a leader in the city's oldest black Methodist congregation. In the late 1840s Bethel was consumed by "a terrible Church trouble" that grew out of attempts to curb "extravagances in worship" and transfer property from one congregation to another.³ The trouble, which some said was led by lay leader George Hackett, brought the congregation into the city courthouse on numerous occasions. A trustee faction was charged with misappropriating church funds. Members were accused of disturbing a religious meeting and, in more than one instance, assault and battery. Deeds and indentures were scrutinized. The letter of the church constitution was invoked. Before the trouble was over, injunctions had been issued, fines levied, and members expelled. The Reverend Stokes, after having his horses poisoned under suspicious circumstances and



FIGURE 5.1 Baltimore's Bethel AME Church. Church communities were important sites for the exchange of legal knowledge and the development of courthouse skills, whether acquired through the wranglings of incorporation, defending church property, or handling disputes over power and governance. Baltimore's Bethel AME Church, depicted here, spent much of the 1850s managing its affairs in the city courthouse. Image courtesy of the Library of Congress.

his wife "threatened and abused," left Baltimore to take charge of a new congregation in faraway San Francisco. The affairs of Baltimore's most prominent African American church were managed in the street, in the sanctuary, and in the local courthouse.

The fracas in Bethel Church might be dismissed as mere excess until one recalls that, second only to commerce, antebellum Baltimore was built on the institutionalization of religious life.⁴ For African Americans, no other institution rivaled the churches; they were the pillars of black culture. Tied to varied denominations – Methodist, Baptist, Episcopalian, and Presbyterian – the city's churches were spiritual havens in which antislavery and civil rights messages were companions to the Gospels. They also offered material sustenance through

their mutual aid and benevolent societies. And they hosted most of the city's schools for black children.

Their founding had been hard-won. Black Baltimoreans rejected the second-class status that had characterized their treatment in white-led congregations and undertook to establish their own institutions.⁵ The state took notice. Generally, Maryland imposed strict regulations on African American religious gatherings.⁶ Black laws tightly constrained opportunities to assemble and worship independently.⁷ Not so in Baltimore, however. There, exceptions made for black congregations became custom and left such religious gatherings unmolested and at liberty to manage their own affairs.

Black churches occupied prominent turf in the city, from Montgomery Street in the southwest to Spring Street in the northwest.⁸ On Sundays, the sight of African American worshipers making their way along Baltimore's streets told a story that white churchgoers could not help but notice. For example, walking across Saratoga Street on their way to Saint John's Roman Catholic, Saint Paul's Protestant Episcopal, Third Baptist, or the Friends meetinghouse, white churchgoers would have been in the company of African Americans headed to the Colored Presbyterian, Saint James Protestant Episcopal, or Bethel Church. Heading up and down Sharp Street near Lombard, those going to the white First Baptist or Saint Peter's Protestant Episcopal would have made their way to services alongside African American members of the Sharp Street African Methodist Episcopal Church.⁹ Black churches decorated the city's landscape and served as signs of African American ambition, pride, and permanence.

This chapter examines how black church leaders did indeed work between the Constitution and the law of the church. Legal acumen was constructed in religious tribunals, where church law and ritual set the terms for judging wrongdoing and meting out punishment. Church disagreements also came before local judges, introducing congregants to the strictures of civil and criminal proceedings. In these ways, legal consciousness was developed in communal settings, becoming deeply embedded in the daily lives of black Baltimoreans.¹⁰ There were in all these instances pressing questions about the right of assembly. Who could regulate gatherings of black Christians, and by what terms? Such occasions also spoke to belonging: as congregations purchased lots and buildings, they became property owners whose rights included protecting their interests by being sued and suing others. These were fragile and often risky circumstances for communities that were always financially strapped. Whether in the act of incorporating their churches, or defending a church building from foreclosure or walking along the city's streets on their way to worship, black Christians inhabited the rights of citizens.

Some churches emerged out of bold bids for autonomy as black Christians broke away from white-led congregations to forge their own identities. Baltimore's Zion Church was established through the efforts of a small cadre of men: a hod carrier, a wood sawyer, a drayman, and a laborer.¹¹ These working people joined together in their sense of community and commitment

to establish a new center of worship for black Baltimoreans. The church's origins also lay in the law. Beginning in 1802, Maryland law provided for the incorporation of Christian congregations. The change aimed to eliminate the necessity to directly petition the legislature. Passed at a time when state lawmakers were expressly enacting laws that deprived black Marylanders of political rights, including the right to vote, the rules for incorporating churches applied to "all quiet and inoffensive Christian societies in this state, without any exception."¹² The act provided guidelines related to the civil administration of churches, but expressly drew a line forbidding the state to abridge or affect "the rights of conscience or private judgment, or in the least to alter or change the religious constitution or government of any church, congregation or society, so far as respects, or in anywise concerns, doctrine, discipline or worship." Black congregations would press courts to give precision to this line as they brought their disputes and church law into the local courthouse.

Any religious incorporation largely was routine. And in the case of Zion Church, the documents themselves were overall formulaic. In 1842 the congregation's leaders set out the terms of its governance, interweaving the requirements of Methodist church law with the state's statutory requirements. Two witnesses, both justices of the peace, were on hand to formalize the incorporation. Still, there was something poignant about the moment when the church's leadership took pen in hand and executed the document.¹³ The leaders numbered nine in total: Minister Jacob Moore and eight trustees. Moore was first to sign his name. Henry Ridgeway, a peddler on Baltimore's streets, was next.¹⁴ The fact that Ridgeway, and after him four more of the nine trustees, signed with an X is only partially telling. Many of the men who founded and led Baltimore's churches were not literate or formally educated.¹⁵

Still, literacy was not a prerequisite when it came to understanding law. Years earlier, for example, Ridgeway had deployed a sophisticated legal maneuver when he placed a notice in the local *Baltimore Patriot* warning potential creditors not to "trust" his wife, Caroline: "I will not hold myself responsible for any debts contracted by her." Ridgeway knew how to use law – in this case, a legal notice – to manage both his marital affairs and his exposure to debt.¹⁶ And when his fellow trustee Daniel Purnell was faced with a wife who had, as he put it, "left my bed and board without any provocation," he adopted Ridgeway's tactic. A notice titled "Caution" warned against harboring or trusting his wife, Matilda, and stated that Purnell would not pay her debts.¹⁷ Legal strategies were thus shared among the men of Zion Church. And as they stood together to formalize the congregation, men like Ridgeway and Purnell expanded their legal acumen. It was through such scenes that black Baltimoreans learned how to use law to carve out rights.

In the summer of 1844 Zion Church leaders took a chance and purchased a small lot located on Spring Street priced at \$350. The group had little cash on hand. They handed over just \$5 as consideration. But their credit was sufficiently good that James Bush, a local carpenter and furniture dealer, entered

into an indenture that imposed a lien on the site – a contract that entitled Bush to seize the property for nonpayment of the church's loan amount. Bush appears to have remained at some distance from the transaction; his attorney, Randle Moale, held a power of attorney and acted on Bush's behalf. The agreement provided that the trustees would repay their obligation to Bush in three installments.¹⁸

The formal execution of the indenture brought together again the original group of black Methodists, including eight trustees and the presiding minister, Jacob Moore. They stood with Bush's attorney and two witnesses, justices of the peace, one after the other inscribing his mark on the text. Only three of the men – Moore, George Stansbury, and Israel Prout – were sufficiently literate to sign their names. Perhaps one of those three also read the indenture document to the others. With that, they took possession of a plot of land intended as the site for a sanctuary and Sunday school in the northwest of Baltimore, on Spring Street near Jefferson.¹⁹ The Colored Independent Wesleyan Methodist Church was born.

The congregation seems to have struggled financially from the outset. All black churches in Baltimore, at one time or another, faced troubles brought on by scarce resources. It was a city without a black philanthropic or capital class. Congregations were filled with working people who themselves struggled to remain solvent in the 1840s. The records also beg questions about the management of Zion's funds. The trustees were never called on to explain why, despite a congregation of hundreds and a Sunday school attended by many more, they made only sporadic payments toward Zion's mortgage debt. But other circumstances also seemed to undermine Zion Church. The first was the matter of competition. By 1842 Baltimore had twelve black churches, more than half of them affiliated with one or another Methodist sect. Baltimore's black Methodists had an array of choices when it came to selecting a house of worship. Perhaps the absence of a clear denominational affiliation hampered the congregation's fiscal security. The AME Zion Church, headquartered in New York, claimed the congregation as its own, while the congregation's chosen name misleadingly suggested the church was affiliated with the Wesleyan Methodists, largely a British denomination. In Baltimore, some of Zion's leaders developed ties to yet another group, the AME Church, but they would formalize those ties only after enduring the effects of the church's indebtedness. Zion Church was a congregation unsure about its institutional identity.

The county court records tell a bare-bones version of the story. Payments made toward Zion's mortgage debt were sporadic and far below the amount provided for in the indenture. After paying \$75.00 in January 1845 and another \$25.00 in October 1845, the trustees paid just \$7.75 in December 1845. Meanwhile, interest accrued. The result was that by September 1846 the church still owed nearly \$200 when James Bush stepped up to collect. Bush filed a complaint that was straightforward on its face: the trustees had

defaulted on their loan obligation and Bush sought the sale of the Spring Street property. The proceeds would go toward paying the mortgage balance and related costs. Attorney George Whelan represented the trustees. Their answer was unremarkable. They did not take issue with Bush's claim and instead conceded their failure to pay. All that remained, it seemed, was to organize a sale of the property and settle the church's accounts. After a public auction and then a trustee's accounting, by March 1847 the matter was settled.

If the proceedings in the Baltimore County court suggest that the dissolution of Zion Church was a matter of efficient administration, proceedings in another part of the courthouse made the congregation's stresses more apparent. In July 1846, just weeks before Bush filed his complaint, Zion's minister, Jacob Moore, was arrested and charged with "creating a disturbance" at a church meeting. A local justice of the peace took a closer look and found the minister without fault, and Moore was discharged. The judge then demanded that each of Zion's trustees post a peace bond to guarantee his future good conduct. A local paper noted: "There is a church difficulty on hand which it is said will be settled before Baltimore county court."²⁰ Word was circulating about the prospect of Bush's case against the congregation. Zion's leadership fractured and tempers flared. Later that fall, the Baltimore criminal court indicted two men – William Johnson and Isaac Vincent – for assaulting Zion trustee Daniel Purnell. By then it was no secret that, as a local paper put it, "difficulties in the church" were being litigated in the courthouse.²¹ Civil and criminal proceedings overlapped as the congregation faced the prospect of losing its sanctuary and school building. What may have appeared to the county court as a routine matter of debt recovery was wrenching to the congregation.

The timing of the confrontation between Johnson and Vincent, on the one side, and Purnell, on the other, suggests how tensions peaked as the church property was finally sold at auction. The fight erupted just two days after the court-ordered sale of Zion's sanctuary and school. On October 10, a court-appointed trustee publicly offered the lot and buildings to the highest bidder at the Baltimore Exchange. The sprawling Exchange building was the crossroads of Baltimore's commercial culture.²² The sale had been in one sense inevitable; once the trustees admitted to the charges against them, it was only a matter of time before the property was sold to satisfy the debt. Still, emotions ran high. And the identity of the purchaser at auction may have especially enraged congregants. The highest bidder was none other than one of Baltimore's most notorious slave traders, James F. Purvis.²³ With a bid of \$535, Purvis became the owner of the property and a party to the congregation's demise.²⁴

Purvis's presence in Baltimore embodied the type of threat that free black Baltimoreans lived with as they went about building institutions. Predatory individuals moved in their midst. In the early 1830s Purvis had migrated to Baltimore from Washington, DC, first operating out of Sinner's Tammany Hall on Water Street and later opening his own Calvert Street office. Throughout

the 1830s and into the mid-1840s, he regularly advertised in Baltimore, seeking to purchase large numbers of slaves whom he proposed to sell in the booming market of New Orleans. In ads titled "Cash in Market," he promised to pay the highest prices for slaves, especially those between the ages of twelve and twenty-five.²⁵ The city's slave trade had long been associated with the kidnapping of free African Americans. As slave prices rose further south, traders and other low-level opportunists preyed on free black people, seizing and then transporting them to the slave markets of cities like New Orleans.²⁶

Purvis profited in multiple ways when he purchased the Zion Church property. In addition to the dollars he may have earned, Purvis gained in reputation as he worked to transform himself from disreputable slave trader to entrepreneurial gentleman. By this time he had stopped advertising for slaves. Instead, he appears in the records as a partner in a brickmaking enterprise and a real estate speculator. Free black people were no less integral to this new enterprise, however. As he had long speculated on their bodies, Purvis now speculated on their property and religious associations. The courthouse gave the Zion Church proceedings an ordered veneer that may have offered some consolation. But even their exercise of a right to defend their property against creditors did not deflect the loss that congregants experienced as their sanctuary and school became the property of Purvis. By 1849 Purvis was among the trustees of the newly proposed Baltimore Female College, and by the 1850s he sat on the board of managers at the city's House of Refuge, or poorhouse. His was a reputation gained at the expense of African Americans in more ways than one. In a cruel twist, after owning the church property for less than a year, Purvis sold it back to the city's black Methodists at a profit.²⁷

Zion Church's leadership may have confronted difficult, even unresolvable financial difficulties, but nothing short of a formal foreclosure proceeding could deprive the congregation and its leadership of its church building and school. In cases such as these, black Baltimoreans developed their own legal acumen, and they hired experts – lawyers and justices of the peace – who contracted to serve as allies, for a fee. Nonetheless, legal rights did not account for all eventualities, and a property sale that promised to remedy a congregation's difficulties could turn out to be no remedy at all when the purchaser was not to be trusted. As in the case of Zion Church, legal proceedings could facilitate unjust, even perverse ends.

Disputes internal to churches did not always find their resolution by way of church law. But turning to the city's court was risky because it put in the hands of judges decisions about a congregation's future. Such was the case with Bethel Church, the city's most prosperous black congregation. Bethel's leaders hired lawyers, filed complaints, and otherwise exercised a right to sue and be sued. Although that capacity turned out to be a robust and versatile right, in Bethel's case it was also a risky tactic. The line that state lawmakers hoped would separate church affairs from state matters was not a bright one by the 1840s. When the local Chancery Court was asked to intervene in a dispute between

warring factions of the congregation, black Methodists learned that despite the apparent wishes of the congregation, a court might interpret for itself the terms of the state statute, the articles of incorporation, and the church's own law, *The Doctrines and Discipline*.

Baltimore's Bethel Church was among the earliest of black Methodist groups to split from the Methodist Episcopal Church.²⁸ Daniel Coker led the Baltimore congregation starting in 1801, and in 1815 Coker's group left the city's white-led Sharp Street Church.²⁹ The experience in Baltimore paralleled those of churches in cities such as New York and Philadelphia. Black congregants lacked decision-making power in white-led congregations and were subject to segregation in the sanctuaries and church cemeteries. Bethel also was Baltimore's first black congregation to avail itself of the state laws of incorporation, and its engagement with that process suggests what a legally self-conscious congregation Bethel was from the outset.³⁰ Between 1816 and 1820, Bethel's leaders filed no less than three times with the clerk of the court as they worked to get the terms of their congregation formalized through articles of incorporation. In April 1816, five trustees and Minister Daniel Coker filed a first act of incorporation that established Bethel as freestanding and independent.

It was a bold move in a period during which most black congregations were still tied to white leadership and oversight. Not so at Bethel, where the trustees were, by the terms of the founding document, "descendants of Africans" and free. Bethel's leaders had more in mind, however. Discussions about establishing an independent black denomination, one that would join Bethel with congregations in New York, Philadelphia, and other cities, were already underway. Hence, the articles of incorporation were carefully drawn, anticipating how church law would come to play an important role in the legal life of the congregation. Reserved for what was termed a "convention of colored ministers and lay members" was the power to "alter and amend such parts of this constitution as they may think require alteration or amendment."³¹ By 1819 the new denomination, the African Methodist Episcopal Church, had been established, with Bethel among its founding congregations. The trustees then amended the articles of incorporation to reflect this new governance structure: spiritual matters would be regulated by denomination-wide conventions. Male members over the age of twenty-one whose names were formally recorded could vote to further amend the constitution. Important authority was being ceded to the denomination and local governance was tightened by the keeping of formal membership rolls.³²

Questions about Bethel Church's governing documents persisted into the next year, 1820. The congregation had been debating how to express its governance through the terms of its constitution, a creature of the state, and its *Doctrines and Discipline*, the terms of which were set by the denominational conference. The trustees explained: "Doubts have arisen as to the true construction of the constitution of 1816 and its amendments. It has been thought advisable rather to make a new compact than attempt further amendments of the old

one.” An expanded board of trustees, fourteen lay leaders, and Minister David Smith appeared before two justices of the peace to execute a third constitution. Among this group was George Hackett’s father, Charles. The source of church law now included a published text, “the book entitled the doctrines and discipline of the African Methodist Episcopal Church” authored by, among others, Bethel’s former minister, Daniel Coker. The number of trustees was expanded to nine, including the minister.³³ Trustees were required to be free men of African descent, age twenty-five or older, who had been church members for at least two years. The constitution made provisions for elections and the control of church property.³⁴ Law was taken seriously as a foundational dimension of Bethel Church, and the expanding leadership carefully crafted a scheme in which the laws of the state and those of the church were in harmony.

While state law encouraged Bethel Church’s independent incorporation, it nonetheless regulated African American religious assemblies. Formal regulation began in 1806 when the state legislature authorized local constables to arrest free African Americans at “noisy or suspicious meetings,” including religious gatherings.³⁵ Over the subsequent decades lawmakers openly decried large gatherings of African Americans, charging that they would lead to “dissipation and riot.” But it was not until 1831, after the Nat Turner rebellion in Southampton County, Virginia, that state lawmakers acted. All African Americans were forbidden from assembling or attending religious meetings unless the gathering was led by a licensed white clergyman or other respectable white person. Under this scheme religious gatherings would continue, but they were envisioned as happening under close supervision, requiring that white people be present until the close of the meeting and constables break up unsupervised gatherings.³⁶ In this respect, Maryland’s restrictions resembled those in other slaveholding states.

The city of Baltimore, however, remained an exception to the state’s general laws. Custom regulated religious assemblies in Baltimore, and the mayor’s office went so far as to issue permits that could be presented should a constable or sheriff seek to interfere.³⁷ Black Baltimoreans were permitted to hold independent services, with written leave of a white preacher. Lawmakers drew a distinction between religious gatherings, which were generally tolerated, and secret society meetings, which were deemed felonies. For the latter, participants could be fined, sold into service, or, in the case of repeated convictions, sold for a life term of slavery. By 1845, religious gatherings were restricted to houses of worship in Baltimore, making camp meetings and other outdoor gatherings illegal. Still, the city hosted large-scale religious gatherings, including AME conferences. In 1847 Baltimore had at least thirteen black congregations, including ten Methodist groups.³⁸

Bethel Church had its own share of disputes, none more prolonged than the case of *Bethel Church v. Carmack*. One starting point for this case was the 1845 appointment of the new minister in charge, Daniel Payne, a man who would go on to serve as bishop in 1852.³⁹ Payne’s journey to Baltimore was

circuitous. As a young man in 1835, he had been pressed to leave his native Charleston when local authorities forced the closing of his school. He migrated to Gettysburg, Pennsylvania, and attended a Lutheran seminary. A brief stint pastoring a congregation in Troy, New York, followed. On moving then to Philadelphia, Payne joined the AME Church in 1840. He arrived in Baltimore five years later as an ambitious minister committed to a reform agenda that was at odds with Bethel's existing culture. Payne aspired to purge enthusiastic styles of worship – folk rituals, songs, and dances. In their place, he sought to impose a restrained style of worship that relied on “order and decorum,” an educated clergy, and scripted organ music. Payne later recalled these years in his 1888 memoir as a deeply unsettled time.⁴⁰ He clashed with Bethel's lay leadership over his efforts to “modify extravagances in worship” and to grant independence to one of Bethel's local missionary congregations, Ebenezer Church. Church law and custom generally set the terms of these disputes and Payne prevailed in both instances.

Payne's reflections on his years at Bethel Church were bitter. Years after departing from Baltimore, he declined efforts to bring him back, even after being reassured that his reform efforts and stern leadership style were “supported by civil and ecclesiastical law.”⁴¹ Payne certainly knew that affairs at Bethel Church were governed simultaneously by the law of the church and that of the state because this juridical equation had been tested during Payne's last year in Baltimore. For Bethel's leadership, the two approaches to adjudicating church differences coexisted awkwardly.

The trouble in Bethel Church began even prior to Payne's arrival in 1845, when Bethel Church took up a regular collection to raise funds for a new church building. On his arrival, Payne sought to speed up this effort and secured the assistance of another local AME minister, Darius Stokes. Their campaign met with success. By December 1848 the amount in the building fund had reached nearly \$3,000. But as it grew, animosities surfaced. Two factions developed among the nine trustees; five, led by a lay member named Joel Carmack, refused to grant the remaining four trustees access to the funds or present the church account books for review. Stokes and three others responded, issuing demands for access to Bethel's financial records by the terms of church law.⁴² Soon Carmack presented the church's books, papers, receipts, and vouchers, but still he refused to give over the bank book. At an impasse, Stokes and the other complaining trustees turned to the civil law and the local courthouse for assistance. Their bill of complaint alleged that the five offending trustees had disregarded and defied “all the requisitions and resolutions” demanded of them and were thus “faithless to their duty and in fraud of their trust.”⁴³ The court acted quickly, granting the complainants an injunction that barred Carmack and the other defendants from interfering with church affairs.

The defendants responded, accusing the complainants of another sort of wrongdoing. They admitted to a small accounting difference of \$319, which

they insisted could be explained. The charge of financial mismanagement was, they asserted, cover for an effort to take control of the congregation. The complainants, it was charged, had no genuine concern about the use of church monies and instead aimed to exclude the defendants “from any participation in the affairs of the corporation” and to “confer on the persons promoting this suit all the powers of the said corporation.” The case was in essence a power grab, one that aimed to displace the defendants from their leadership of Bethel. Hearing this, the court left the injunction in place and set a hearing for five weeks later, in March.

During this pause in the proceedings, Bethel Church was in the hands of Stokes and the other complainants. In late February, they convened a church tribunal. A public trial was held in the Bethel sanctuary.⁴⁴ Carmack and the other defendants were accused of appropriating “for their own use money collected for the benefit of the Church.”⁴⁵ What local newspapers termed a “melee” broke out. A “general fray” ensued, the one described at the outset of this chapter, which ended only when the city watch arrived. Five men were charged with disturbing a religious meeting, and two women were arrested for assaulting and beating Darius Stokes, his brother, and the Reverend Payne. For the second time in as many months, Bethel’s congregants and lay leaders found themselves presenting grievances to a state tribunal. Once in court, the dispute only escalated. Supporters of the accused attended the sentencing and were no more deferential to the authority of the state court than they had been to the ecclesiastical one. Some took up a collection to pay the fines levied by the court. Another remarked that “he was sorry for one thing – that it was Stokes that was not killed; or in other words, that the woman did not give him half enough.”⁴⁶

Bethel’s disputes moved to the pages of the local newspaper in the days that followed. The court of public opinion demanded attention, as news reports deemed the confrontation at Bethel Church “disgraceful.”⁴⁷ Carmack and his allies took out a paid notice that explained their arrest as nothing more than a ploy to open the way for layman George Hackett and “his colleagues” to assume leadership of Bethel. Carmack defended himself and his associates as “honorable men . . . whose character for honesty and sobriety can stand a scrutinizing test.”⁴⁸ Writing for the opposition was “H.,” – likely George Hackett – an ally of Stokes and Payne. He defended the ministers’ characters. The dispute, he suggested, went as far back as a disagreement between Stokes and Bethel’s trustees in 1846, when the trustees had apparently refused to settle an account with Stokes. Instead, they had brought suit against him. Stokes prevailed at trial and was awarded nine dollars. But the trustees appealed the case to a higher court, where it was still pending two years later. Hackett made clear his purpose: “We submit this statement of facts to the public, and leave it to them to judge upon whom their censure ought to fall.” There was indeed yet a third tribunal of consequence, and that was Baltimore’s general public, which might pass its own judgment.⁴⁹

Subsequent filings made clear what was at stake. At the heart of the case were questions about who controlled the “temporal matters” of the church. What body was authorized to act on behalf of the church in state courts? Both sides asked Maryland’s Chancery Court to reach its own finding, even though the same questions had already been vetted by a church tribunal, in a criminal hearing, and in the newspapers.⁵⁰ Church law remained key. Bethel’s constitution empowered nine trustees, one of whom was the minister in charge, to manage the business affairs. Yet in this dispute, the trustees themselves were divided. Three trustees, along with a number of laymen, had brought suit on behalf of the congregation. But they did not constitute a majority of the trustees. Five trustees were named as defendants. Did they constitute a majority such that they could justly determine church finances and exercise control over its assets?

And what of the congregation? Did it have any standing independent of the trustees in the matter? By early March the complainants thought they might, and they organized two meetings during which the matters pending in *Bethel Church v. Carmack* were put to the church membership. George Hackett’s entire family was present: his parents, Charles and Charlotte, and his daughter, Henrietta. The result was a four-foot long petition with nearly three hundred signatories, said to have been appointed by the congregation as a whole for the purpose of endorsing a series of resolutions. They condemned Carmack and the other defendants: “\$1,000 could not pay us for the misery they have done . . . Neither could a life time of repentance . . . ever efface . . . the stain which they have brought upon [the church].”⁵¹ The body then did away with the existing corporate seal – in essence the official signature of the congregation – and authorized the pastor to commission a new one for his exclusive use. The congregation’s petition captures the details of a dramatic scene: a public gathering at which hundreds of congregants, men and women, lined up to approve the litigation already under way. Their authority was nowhere provided for, not in church law nor in the law of the state. Still, on March 9 the complainants filed what came to be labeled “Exhibit A”: a lengthy document that evidenced a collective church ritual intended to shape the outcome in a civil proceeding.

Was the congregation empowered to authorize the suit and collectively testify on its merits? Chancellor John Johnson of the Chancery Court concluded it was not. Only the trustees could act on behalf of Bethel. The three trustee complainants were, however, the correct parties. Their number constituted a majority of a quorum and thus their decision to bring suit would be honored by the court. In contrast, the five trustee defendants had been sued in their individual capacities, rather than as representatives of the church, and the charges against them would go forward.⁵² Convening a mass assembly likely galvanized the church community as a whole. Hundreds of worshipers became parties to the dispute and collectively condemned the defendant trustees, much in the way the church tribunal had done months before. Still, the congregation’s

resolutions were deemed irrelevant to the Chancery Court proceedings. They were instead represented by a small quorum of trustees, and without standing as a body to challenge the mismanagement of church funds under the terms of Bethel Church's constitution and its laws, *The Doctrines and Discipline*.

The image of Darius Stokes "resting with one hand upon the Constitution and with the other upon the Discipline of the Church" was less a metaphor than a literal reflection of how Bethel Church managed a serious and prolonged dispute. Church law as expressed in Bethel's constitution and denominational law, *The Doctrines and Discipline*, provided one framework for resolving who controlled church finances and under what terms. A church tribunal had been convened to try offending trustees, who faced formal findings of wrongdoing and the threat of expulsion. The laws of the state of Maryland were no less significant. State statutes that punished the disruption of religious assemblies and assault regulated the inner workings of Bethel's sanctuary and brought congregants face to face before state authorities to testify in the local courthouse about conduct within the sanctuary. Baltimore's Chancery Court assumed authority over the allocation of church decision making. Trustees might act on behalf of the congregation as a whole, it found, if they came together in sufficient numbers. But they might be liable in their individual capacities when they acted without the approval of the trustee board. Congregants, in the state's view, were without standing to influence a dispute among trustees. Still, their collective denunciations might influence how contests over church authority played out in the day-to-day life of the church.

Where the story of *Bethel Church v. Carmack* ended is difficult to say. One end point was the court's decision of June 1851, in which the standing or authority of the three trustees to bring a case against five fellow trustees was upheld.⁵³ The case then languished until at least 1857, when it was abandoned by all concerned. There is however another end point, one that follows the lives of the key protagonists. Their stories reveal how civil authority and church authority worked in tandem. In June 1850, Baltimore's AME Quarterly Conference – the body that governed the city's local congregations – ordered Darius Stokes to give up his position as chief steward of Bethel Church. Shortly thereafter Stokes was suspended for six months after he held a "bush meeting" without authorization.⁵⁴ Congregants also continued to take leadership disputes with Stokes into their own hands. During the summer of 1852, church members Lucy Riggs and Ann Hughes were charged with assaulting Stokes's wife. Stokes himself was again assaulted in the Bethel sanctuary, and his assailant, James Brown, was charged with inciting a riot.⁵⁵ Later that year, in November, Stokes's twelve drayman's horses died, it was said, by a "foul means . . . by malicious persons."⁵⁶ By late 1853 Stokes was living in San Francisco, where he resumed his work as an AME preacher.⁵⁷ Hackett also faced challenges to his leadership, as was the case in March 1852 when Mary Taylor, the wife of a Bethel Church sexton, attacked Hackett in front of the sanctuary.⁵⁸ Hackett too abandoned Bethel Church, and by 1865 he

was serving as presiding elder Baltimore's Ebenezer AME Church.⁵⁹ The dispute that became *Bethel Church v. Carmack* continued to reverberate. Intimate confrontations that played out in Baltimore's courthouse would continue to play a role in rearranging black Methodist leadership.

Baptist churches, like their Methodist counterparts, navigated between secular and church law. Baptist churches also came together before lawyers and justices of the peace before worshipers could come together for a Sunday service. The subject matter of sermons and the style of music to be played were secondary matters. First, Maryland law insisted, a church must be incorporated and establish governance structures. By church law, Baptist congregations enjoyed more autonomy than did their Methodist counterparts because decision making was carried out locally, rather than by centralized associations. Church members, for example, elected their own ministers. Even so, black Baptist congregations remained financially and culturally linked to white-led associations such as, in Baltimore, the Maryland Baptist Union Association.

Baltimore's black Baptists faced some of the same tensions experienced by Methodists. Church communities grew in size, factions emerged among the leadership, and the establishment of new congregations was fraught and sometimes deceit-laden. Baptists tussled over control of church buildings, and new congregations were born out of a painful and legally complex set of contests. Turning to the local courthouse and seeking the intervention of a judge became routine.

Baltimore's First Baptist Church was founded out of happenstance.⁶⁰ In 1812 the city's white-led First Baptist Church on Sharp Street opened a school. Its intent was to educate white adults, but when African American men and women began to vastly outnumber the white pupils, the mission was changed. At the end of that year, 160 African American students made up the core of Baltimore's first black Baptist congregation, and for the next twenty-five years the congregation remained an informal though vibrant community. How things changed is a matter of some debate. Was the congregation formalized at the behest of white Baptist activist William Crane, or was it the former slave and Baptist preacher Moses Clayton who took the initiative? Both Crane and Clayton arrived in Baltimore in 1837 from Norfolk, Virginia. By late that winter, five members of the African American First Baptist Church, along with the Reverend Moses Clayton, were before two justices of the peace, formalizing their incorporation.⁶¹

But first Clayton had called together his congregants to settle on the terms of their union. The male members over the age of twenty-one met and elected a board of trustees. They established the voting rights of congregants: only men over the age of twenty-one and "free from the charge of any breach of morals" would vote. Only free men could hold leadership slots. A majority of the members – a term that appears to have included women (the term "voters" was crossed out in the text) – would choose the minister. On March 14, the trustees and Clayton himself executed the articles of incorporation.⁶²

The formalities were typically carried out, with First Baptist's leaders asserting their ownership and control of the congregation by signing their names or otherwise making their marks. A closer look at the incorporation document reveals an important omission. At no point did this group of black Baptists acknowledge or make reference to white Baptists or suggest that their governance was tied to a broader polity or rule of laws. This autonomy is striking when contrasted with that of Bethel Church, for example, where leaders went to some lengths to formalize their deference to the denomination and its laws. Most striking, the well-known Baptist leader William Crane was nowhere to be seen in this founding moment. Whether he was excluded or just out of sight on the margins of the scene is difficult to say.

It is clear, however, that the First Baptist Church remained closely tied to the city's white Baptists. The latter had organized in 1836, the Maryland Union Baptist Association. Black Baptists had not been included at the outset, but in 1841, when Clayton and his congregation requested admission, they were welcomed.⁶³ By 1844 the "colored church on Lewis street, Baltimore," was among the fifteen congregations that made up the association.⁶⁴

Moses Clayton came to First Baptist with his own experience. Clayton was born enslaved in Virginia's Tidewater region in 1783.⁶⁵ Had he been manumitted or had purchased his own freedom, the record does not say. But without question, his early life included time spent in a local courthouse. Clayton carried the evidence of this on his person, in the form of "free papers" for himself and wife and her two daughters.⁶⁶ By the time he arrived in Baltimore in 1836, he was literate and possessed a preacher's gift for public speaking.⁶⁷ Clayton immediately set out to formalize the city's black Baptist community. There were negotiations with white Baptist leaders like William Crane, but it was Clayton who oversaw the steps necessary to formalize the community.

Clayton is remembered as a builder. He constructed a small church for his flock on Baltimore's Lewis Street. He was as responsible as any black minister for making visible the commitment that many African Americans had to living out their lives in Baltimore. And still, Clayton had doubts. When it was proposed that black Baltimoreans migrate to British Guiana or Trinidad, the Baptist leader lent his support to the public debate.⁶⁸ Emigration schemes captured the aspirations of black congregations, and their ministers facilitated extended debates about the relative merits of life in the United States versus that in black-led republics elsewhere in the world.

By 1849, First Baptist was experiencing what might be termed growing pains. There was talk about the need for a second black Baptist congregation in Baltimore. But the situation devolved into one of deception and deceit. Before there was open debate or outright litigation, signs suggested that control over the congregation was in flux. Keys to the sanctuary and the church's account books passed from hand to hand. Assemblies were called, evidencing varied capacities to attract and perhaps sway a majority of voters. Soon such internal wrangling proved inadequate. No resolution was in sight. The question

of who controlled the First Baptist sanctuary was brought before Baltimore's Chancery Court.

In 1850 two competing factions were in contention in First Baptist. Moses Clayton had resigned from his post as founding minister, and in his place stood John Carey, who brought with him a new roster of trustees. We do not know whether it was Clayton or Carey who first proposed forming a second congregation. Clayton may have resigned in anticipation of establishing a new congregation; witnesses said that it was Carey who approached the city's white Baptist leadership to secure its approval for a new church. What is sure is that by 1851, the two men and their factions were openly at odds. Their point of contention was the church's debt: How much was it, and how should it be satisfied? The trustees had entered into an indenture in 1841 that had yet to be satisfied. Carey recommended the sale of the Lewis Street church. Clayton disagreed and, according to a witness, asserted that Carey and his cohort "ought to be whipped if they allowed it to be sold." Another faction proposed taking stock of the debt and then paying it down at the rate of fifty dollars per month. The question was put to the congregation on more than one occasion.

By the time the parties came before the court, Clayton had been reelected minister and his trustees, too, had been reinstated. But this formality had not stopped Carey and his allies from selling the building. In November 1851, three months prior to the filing of Clayton's suit, the building had been sold to a Benjamin Brown for \$240. Brown was a former trustee and Carey ally. Clayton's complaint alleged fraud. Brown, he asserted, had conspired with Carey and the other trustee defendants to deprive Clayton and those loyal to him "from worshipping there and from enjoying their *religious and legal* rights and privileges" (emphasis added). Clayton's attorney, Orville Horwitz, was experienced in church matters. He had also represented Bethel's leadership in its case. Clayton prevailed; Carey and his trustees were enjoined from everything but worshipping "as other members or persons" and prevented from further interfering with Clayton's use and occupancy of the building "for the worship of God."⁶⁹ Carey was unrepentant, and within weeks Clayton was back before the court seeking an amendment to the order that would prevent Carey from locking him out of the sanctuary. The court agreed, but it was a short-lived victory. By April the court had dissolved the injunction. There was no evidence, Judge Frick concluded, that Clayton and the other complainants were being excluded from worship services at First Baptist. (He left the other question about current leadership, the sale of the sanctuary, and fraud for a trial on the merits.)⁷⁰ Fifteen months later the Maryland Court of Appeals would agree.⁷¹

Had Carey and his allies defrauded the Clayton faction? Perhaps. Not long after the case settled, Carey organized a new congregation, Union Baptist Church. And Union Baptist would take over legal ownership of the First Baptist property, purchasing it for \$240.50 and thereby winning Brown a profit of just

50 cents.⁷² Either Brown had been overtaken by a sense of benevolence and given the property back to his former church, or he and Carey had indeed colluded against Clayton, successfully winning control of the building by way of a fraudulent sale. This would have to be enough to satisfy Carey and his faction. Moses Clayton persisted and reopened First Baptist in a new building on Thompson Street.

William Crane, the white Baptist lay leader, frequently inserted himself into the workings of black Baptist congregations. Some characterized him as a patron. He viewed himself as a benefactor. His interference may have been the price churchgoers paid for his support in the building of black congregations. It was evident, however, that Crane's presence equaled white meddling in black church affairs, or worse. In 1847 Crane repeated the scenario that he had enacted with Clayton a decade before. Crane invited a former slave from Virginia, Noah Davis, to Baltimore, where Davis set up a new Baptist congregation in a small meeting room. In the following year, 1848, it was Davis, it is said, who formally established the Second Baptist Church. Now there was competition in Baltimore for black Baptist congregants, and that contest was being facilitated if not fueled by white church leaders.⁷³

Two points in this story suggest how ties to white Baptists continued to trouble black Baptist congregations. The first point is about structure. Davis, unlike his counterparts Clayton and Carey, had an interracial board of trustees that was dominated by the six of its nine members who were white. Nothing in the law prevented this. The articles of incorporation of black Baptist congregations did not restrict leadership to men of African descent, as was the case for black Methodists. Had either Clayton or Carey faced pressure to have white men on their boards? It is not possible to say. But Davis's case suggests that white Baptist leaders in some cases were eager to control black congregations and nothing in either church or state law prevented that.

The second point is about the complexities of property ownership. In the early 1850s Davis and Crane collaborated on the construction of a new church building for Second Baptist. It was an ambitious proposal that included a large sanctuary that would seat more than a thousand worshipers and, upstairs, meeting rooms and a school. Crane's sense of benevolence took on grand proportions as he financed the construction, at a cost of \$8,600. The congregation was, however, responsible for repaying the debt on Crane's vision. By the time the sanctuary opened, questions and the crushing nature of the obligation led Crane to make a public disclosure. He had retained ownership of the church building and had never passed the title to Davis and the congregation. In addition, Crane had originally planned to rent out the upstairs meeting rooms at a profit, a scheme that failed for lack of clientele. Crane's heavy-handed alliance with Second Baptist left the congregation with no sanctuary and a debilitating debt. The contest between Clayton and Carey had been fraught and underhanded, but they had managed to sustain two congregations in the

wake of their litigation. Davis, on the other hand, never challenged Crane, and the result was fatal for his congregation.⁷⁴

Law mixed with spiritual fervor in the creation of religious communities in black Baltimore. When disputes arose, congregations variously wielded the law of the church and that of the state. Law was in one sense where all black congregations began, and free black religious leaders took great care in crafting their founding documents to delineate the relationship between their church, the state, and their white benefactors in the church's day-to-day governance. In some instances courts came to serve as distant arbiters on fine points of leadership and authority. At other points, judges became unwitting actors in scenes of pitched disagreement and deception. As church cases made their sojourn through Maryland's courts, the limits of the state's capacity to interpret the letter of church law were exposed.

Differences over church finances and leadership shed light on how free African Americans made citizenship-like claims. The capacity to incorporate their associations and then exercise the right to sue and be sued in the state's courts wove free black Baltimoreans into the fabric of the city. And the presence of their church buildings and the sight of their bodies on their way to worship served to sharply counter proposals for the colonization or banishment of African Americans from Maryland. The presence of black church members in the courthouse, as complainants and defendants, reflected how they exercised what would come to be recognized as one of citizenship's hallmark civil rights: the right to protect their persons and property before the law.⁷⁵

By Virtue of Unjust Laws

Black Laws as the Performance of Rights

“We are Americans, having a birthright citizenship,” wrote Martin Delany. The year was 1852 when Delany set out his ideas in *The Condition, Elevation, Emigration, and Destiny of the Colored People of the United States*.¹ Delany’s reputation as a journalist and antislavery orator was well set. In this, the first of his six books, he shifted from chronicle to analysis before ending with polemic, mixing feelings of contempt and despair with pride. Free black Americans had reached remarkable heights in education, commerce, politics, and the arts, he acknowledged, despite a rising tide of racism. Delany concluded that the time had come for African Americans to leave the United States, marking the emergence of a new emigration movement. Still, Delany made plain what he was walking away from: citizenship.

Delany explained African American belonging in cultural and historical terms: “Our common country is the United States. Here were we born, here raised and educated; here are the scenes of childhood; the pleasant associations of our school going days; the loved enjoyments of our domestic and fireside relations, and the sacred graves of our departed fathers and mothers.” The United States was home in an affective sense, Delany recognized. Further, free black Americans had demonstrated their belonging through labor and military service. Delany recounted for readers the many African American contributions to the nation, its security, and its prosperity.²

Law was central to Delaney’s construction of citizenship. Nothing less than birthright guaranteed to black Americans their place: “We are Americans,” he declared, by virtue of “having a birthright citizenship – natural claims upon the country – claims common to all others of our fellow citizens – natural rights.” Why, then, emigration? Delany explained how the rights of African Americans could “by virtue of unjust laws, be obstructed, but never can be annulled.” Black laws, in this view, were at odds with a natural-law claim to birthright. Delany’s list of such “unjust laws” was long. State black laws regulated

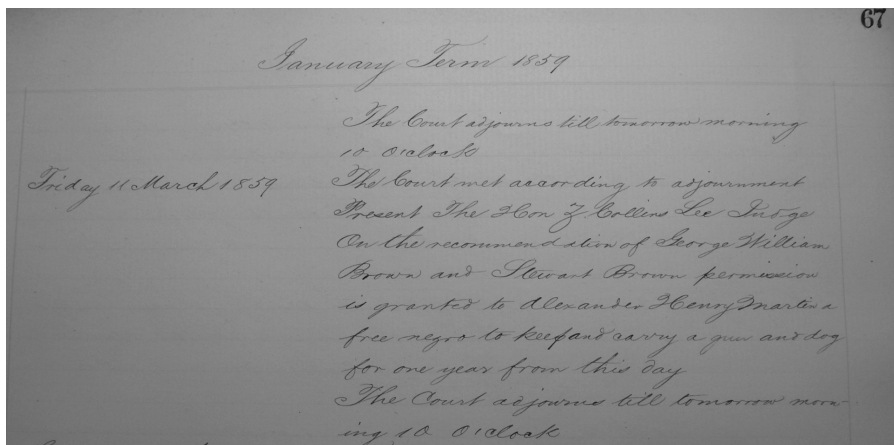


FIGURE 6.1 Gun Permit Application. Black Baltimoreans were among those who carried guns in a city whose political culture was often riven with violence. They also carried court-issued gun licenses, a sign of inequality and evidence of a right won with the cooperation of lawyers and judges. Image courtesy of the Maryland State Archives.

labor, associational life, travel, and commerce. Troubling on their face, these statutes also had an unspoken aim, in Delany's view: the removal of free black Americans from the United States. Provided for in the text of state black laws were conditions so adverse that free black people, it was hoped, would leave their individual states and perhaps even leave the United States entirely. Delany railed against lawmakers who plotted the excision of free African Americans. The right to remain, to stay put, was Delany's foremost claim.³

Birthright citizenship was a fully formed idea by the early 1850s. Even men who opposed Delany's emigration scheme, such as those who met at the 1853 Colored National Convention in Rochester, New York, mirrored his thinking. Frederick Douglass headed a committee at the convention that wielded citizenship as a weapon against black laws and removal in its address "to the people of the United States." The address positioned black Americans "not as aliens nor as exiles" but as "American citizens asserting their rights on their own native soil." "We would, first of all, be understood to range ourselves no lower among our fellow-countrymen than is implied in the high appellation of 'citizen.'" This was an expressly legal claim: "By birth, we are American citizens; by the principles of the Declaration of Independence, we are American citizens; by the meaning of the United States Constitution, we are American citizens." Supporting authorities, such as the delegates to New York's 1821 Constitutional Convention, were invoked. The language of the Constitution was examined to explain that "white" did not restrict the guarantee of privileges and immunities to citizens. Pronouncements connected to Missouri's 1821 admission as a state were reprinted, evidence that some members of Congress believed themselves

bound to recognize free people of color as citizens. An 1814 proclamation from then Major General Andrew Jackson was quoted for its suggestion that the free colored inhabitants of Louisiana were “fellow-citizens” to their white counterparts. William Yates’s 1838 treatise likely helped the committee set out its evidence. And their conclusion was unequivocal.⁴

The delegates objected to laws “limiting the aspirations of colored men, as against white men.” Such black laws must be repealed, they urged. White men needed no protection from competition, and black men were entitled to honorably pursue “life, liberty and happiness.” The convention aimed to see “wicked and oppressive law become dead letters upon the page of our statute books; societies for our removal become extinct.”⁵ Such laws were antirepublican and unconstitutional, they argued, and aimed at not simply the regulation of everyday life. Instead, they constituted a grander scheme to “down us and drive us into exile!”⁶

This chapter examines the confrontations that Maryland’s black laws provoked for free people of color in Baltimore. While their terms were wide ranging, a closer look at the city’s criminal docket shows how infrequently such laws were enforced. Laws requiring travel permits and gun licenses are two of the more striking examples. Both mobility and the possession of firearms had material significance – they enabled self-sufficiency and self-protection. They were also linked to emerging discussions about what rights the Constitution might protect: abolitionists argued that the Second Amendment extended to free people of color a right to bear arms, and the Supreme Court was beginning to provide for a right to interstate travel. In Baltimore, free people of color were regarded as an exception in the sense that they required court permission to inhabit such rights. But they did gain the rights to travel across state lines and carry firearms. Along the way, they made lawyers and judges into accomplices whose own reputations turned on the ability of free black people to comport themselves like rights-bearing people.

Black Baltimoreans were not represented at the 1853 national “colored” convention. Nevertheless, little of what unfolded in New York would have surprised them. Closer to home, in Annapolis and Baltimore, other conventions – some led by black men and some by their white counterparts – continued wrestling with how to define their status. State lawmakers asked how a new constitution should define their relationship to its protections. Activists clashed over the old question of whether they should submit to colonization, embrace emigration, or simply stay where they were. Baltimore put to the test ideas debated in New York’s national convention, and the proving ground for citizenship was not a meeting hall. Baltimore’s black men and women brought their questions to the local courthouse. What they did there, securing travel permits and gun licenses, carried a double meaning. The state might regulate its African American residents, but such regulations could be turned into assertions of rights.

This chapter reconsiders the significance of license and permit applications. Black laws that required court permission to travel or own firearms were not

widely enforced in Baltimore. Still, black men and women presented themselves to the local courts, asking for approval. If there was little fear of apprehension or punishment, why did they take the trouble? One answer lies in the degree to which permits and licenses were also symbolic, transforming travel outside of the state and the possession of a gun into the exercise of rights approved and enforceable by the city's judges. The everyday means by which black Baltimoreans secured their persons and their possessions were also performances of belonging, endorsed by the recommendations of white lawyers and the orders of white judges. By 1851 the backdrop for these acts was a new state constitution that had failed, despite its framers' efforts, to fix the status of free black Marylanders. In the face of legal indecision and uncertainty, those who traveled or owned a gun might very well have a right to do so.

The drafting of a new state constitution in 1850 was an opportunity. The convention, the first in eighty years, was an occasion for breaking the silence around the status of free African Americans. Maryland had been governing free black people by way of legislative edicts passed over many decades. As delegates gathered in Annapolis, many of them were eager to fix the status of free black people. Weeks were devoted to long and probing deliberations. On some issues, slavery among them, there was easy agreement. The state's elite lawmakers agreed to protect slavery as an institution and ensure that it remained unmolested by the legislature. The result was an absolute bar against abolition in Maryland, guaranteeing the future of slavery.⁷

On free people of color, the tenor could not have differed more. There was a brief, early agreement. Few questioned the proposed terms of article 1, section 1, which reserved the right to vote to "free white male persons of twenty-one years of age." This provision was carried over from the prior constitution.⁸ This turned out to be the only easy meeting of the minds. Slavery was inviolable, and free black men could not vote. But beyond that, when delegates were asked what other rights, if any, free African Americans might be guaranteed, or when asked if they might be citizens, discord reigned.

Such questions first arose indirectly during a debate over a proposed guarantee of security to "freemen" in their persons and their property. The term "freemen" was ambiguous. Did it include only free white men, or did it include free men of color? Opposition to the term coalesced around the view that nothing in the constitution should impair the legislature's right to remove free people of color from the state, at will. To promise protection of the property and persons of free black men was to compromise the right to remove them, it was said. The parameters of a debate were set.

In the exchanges that followed are signs of how salient the designation "citizen" could be. Some delegates proposed substituting the word "citizen" for "freeman," urging that such language would exclude free African Americans from such protections. Free black people were patently noncitizens, in this view. Others argued that no such amendment was necessary because free black

people were already understood to be mere denizens – in other words, somewhere between a natural-born citizen and an alien and, in Maryland, always subject to the state's police power of removal. Some advocated that it was imprudent to place free men of color outside the "pale of legal protection," while others urged that the convention could invoke its "right" to "violate the rights of the colored people" only if such persons first conducted themselves unpeaceably.⁹ William Blackistone, former speaker of the State Assembly, insisted that free black people must necessarily enjoy some rights: Once "a human being, native, or foreigner, white or black, bond or free, sets his foot upon our soil, he is under the protection of the laws of the State." Blackistone conceded that he would be willing to remove free people of color to Liberia, where they "would have rights which will not be given to them here." But short of that, he insisted, free African Americans should be secure in their persons and property.¹⁰

Freemen. Denizens. Human beings. These were among the various characterizations of free black Marylanders at the convention. Most lawmakers struggled with locating a middle ground, asking what sorts of rights might be guaranteed to African Americans. The final text of the constitution guaranteed to "free men" security in their property and persons, while at the same time allowing the legislature to pass "all such laws for the government, regulation and disposition of the free colored population . . . as they may deem necessary."¹¹ No mere denizens, free African Americans might be accorded protections for their persons and property, but the legislature had the discretion to supersede such rights.

In the face of this fumbled opportunity, the convention's Committee on the Free Negro Population determined to arrive at some substantive provisions. The committee's charge was explicit: To submit "some prospective plan, looking to the riddance of this State, of the free negro and mulatto population thereof, and their colonization in Africa."¹² Its first effort was a statistical report. The state's free black population had increased by 1,000 percent since 1790, from just over 8,000 to more than 73,000 people in 1850. But the most important numbers were those that explained the relative rates of population growth for free black versus white Marylanders: "The free negro population, given the rate of progression, must, in a few years, exceed the white population in eleven counties of the state."¹³ What did such numbers say? To the committee, they quantified the growth of a population that burdened the state with its passivity, lack of ambition, and complacency. The committee's recommendations aimed at ridding Maryland of such people "reared in all the vices, ignorance, wants and degradations, characterizing a class of our population called free, but in reality the veriest slaves on earth."¹⁴

Here was a rationale for doing what the delegates as a whole had failed to do: enact policies that would ensure the removal of free people of color from Maryland, a position borne of radical colonizationist thought. The committee's proposal came in the form of four additional articles proposed for inclusion

in the final constitution. The first clause authorized legislation for the “governance” and “removal” of free people of color, and further directed that a registration requirement be imposed. Here, lawmakers laid the groundwork for a scheme that countered the voluntary quality that generally characterized colonization. All free black people in Maryland would be on notice that they could be forcibly removed from the state, as was expressly authorized by law, no due process required. They would be called on to facilitate their own removal by registering their presence with the state. The second clause declared free people of color barred from holding “real property,” and that any such conveyances would be “null and void.”¹⁵ Here lawmakers sought to negate a long-standing strategy by which free black Baltimoreans had asserted ties to the state, homeownership. As for black churches, their titles, too, would be annulled, undercutting the center of associational life and the autonomy that grew out of owning church sanctuaries and schools.

Proposal three voided manumissions if former slaves failed to leave the state within thirty days of gaining their freedom. This offense, which previously had been punished only by a fine, would lead to reenslavement. The fourth proposed article would bar any free person of color from entering the state. This was envisioned as an absolute bar, and here the committee’s intentions were explicit. No longer would the movement of free blacks into or out of the state be permitted – not pursuant to a court-ordered permit, nor in the company of whites, nor for those headed to Liberia by way of Baltimore’s port.¹⁶

The committee’s proposals were consistent with its mandate. Still, they went nowhere. The chair, Eastern Shore slaveholder Curtis Jacobs, never persuaded delegates to consider his report.¹⁷ Instead, deliberations were delayed by a vote of the delegates as a whole.¹⁸ Not only were delegates unable to fix the general status of free black people, they ignored a committee report on the matter and effectively left the question in the hands of the legislature. After months of deliberation, Maryland’s lawmakers had gotten no closer to settling the question of free black people and their status. Competing ideas and interests had scuttled consensus. More important, they exposed how divided were the minds of white lawmakers. The 1851 constitution introduced more questions than answers.

Baltimore’s free black activists were watching, and in response to the new constitution, they called a Free Colored People’s Convention of their own. They were disheartened. Black laws had long been used to pressure them to leave the state. Now lawmakers had again openly advocated their forced removal. There was little consolation in lawmakers’ failure to either arrive at a consensus or set forth transparent terms for removal. The legislature clearly retained the general discretion to enact laws it deemed appropriate and also held a constitutionally sanctioned right to remove free black people from the state. Black Baltimoreans responded with a well-established practice among free black activists; a meeting that brought together sixty-one black leaders from throughout the state. Commentators such as Frederick Douglass

expressed surprise that such a meeting could be held in a slave state at all. Still, ministers, teachers, barbers, and carters came together to reconsider colonization in Liberia and to make recommendations to the state's free black residents.¹⁹

A circular announcing the meeting put colonization and emigration up front, inviting delegates to "take into serious consideration our present condition and future prospects in this country, and contrast them with the inducements and prospects opened to us in Liberia, or any other country."²⁰ Silence in the state constitution of 1776 had left room for black Marylanders to negotiate their status. The constitution of 1851, Chairman John Walker explained, did not recognize them at all.²¹ Walker set the tone by reminding delegates how their legal status had deteriorated over the years. Black Marylanders in 1852 lived in the same state their fathers had lived in, he explained. But they did not live under the same constitution.²²

Walker recognized the influence of colonization in the 1850–51 constitution. For example, delegate William Blackstone had measured free black people's rights in the United States against those they could expect to enjoy in Liberia, promoting the colonizationist view. Maryland's legislature had always extended financial support to colonization, unlike Congress. By 1850 the state had expended nearly \$300,000 to encourage and facilitate the out-migration of African Americans. Just over a thousand individuals had emigrated, while many thousands of others were witness to the black families who passed through Baltimore en route to Liberia. In 1852, interest was renewed.²³ This was because, as Blackstone suggested, Liberia promised a robust citizenship, pledging to make each black Marylander "a free man" who could exercise "all the functions of a free republican government [and hold] an honorable position."²⁴ Lawyer John H. B. Latrobe had drafted the colony's constitution, guaranteeing to black migrants the rights to bear arms, to trial by jury, to security in persons and property, to due process of law, to testify and confront witnesses in court, to own real property, and to make and enforce contracts.²⁵ In contrast, the prospects in Maryland remained dim. While colonization generally had been the target of African American disdain, black Maryland's leaders once again reconsidered the prospect of making their lives over for the better.²⁶

A meeting to discuss colonization was highly provocative. Before the convention completed its first day, delegates were confronted by what the *Sun* newspaper described as several hundred "evil disposed and riotous" individuals. Protestors assailed delegates as they entered the hall, while others gained entry and disrupted the proceedings. By the day's end, some delegates so feared for their safety that they abandoned the convention. The local press credited the city police with reprimanding the "outsiders" and "rowdies" and preventing a general melee.²⁷ Such violence was not new in Baltimore, as black Baltimoreans were often the targets of mob violence. But this confrontation was distinct. The outsiders and rowdies set on disrupting the proceedings were

African Americans themselves. Talk of colonization led the city's free black activists to confront one another in meeting halls and in the streets.²⁸

The 1852 convention was exceptional, and not simply for the violence that it generated. It was still true that black-led conventions were rare in Baltimore. And while the convention had attracted press attention well beyond the city, that coverage likely exaggerated the significance of the clash. The local courthouse remained the main stage for confrontations over race and rights. Black laws – those acts that broadly defined what it meant to be a free black person – drew free people of color to clerks' offices and judges' courtrooms most days of the week. Most despised the black laws that originated in Annapolis, where legislators hammered out their compromises. Most often spearheaded by the slaveholder-dominated Committee on the Free Colored Population, proposals for black laws failed in the legislature as often as they succeeded, with lawmakers breaking down along geopolitical lines: Baltimore representatives were frequently at odds with men from the state's south and the Eastern Shore. Those laws that passed reflected concessions on both sides. At the same time, they papered over the same differences that had troubled the 1850–51 constitutional convention. There was no agreement about how to regard black Marylanders before the law.

Through permits and licenses, the law's power was being redistributed to a degree that many working people, white as well as black, recognized. Such documents embodied more than a contract or privilege and by the end of the eighteenth century had come to be viewed as personal property by those who held them, or at least that was the case in Massachusetts.²⁹ In Baltimore it was also true, and workers drew on the language of rights when opposing authorities who revoked or restricted the transfer of licenses. Black law-derived permits and licenses might be viewed in the same way. The legal authority of white men was also affirmed. Those who provided recommendations reinforced their standing before the court as individuals with high reputations and discerning capacities that could undergird a judicial determination. For judges, the authorization of permits was an imposition of their legal judgment on the social world. All parties to a permit or license expected that, on the city's streets, their agreements would be respected and deferred to. There are no signs that they were not.³⁰

Big questions framed small permit transactions. Was there a right to interstate travel in the 1850s, and if so, for whom? This question occupied the thinking of courts high and low, as individual states sought to regulate who could enter their territory and under what terms. At the heart of these deliberations were the puzzles posed by free African Americans. Congress in 1821 had debated Missouri's attempt to bar free black migrants by the terms of its founding constitution. By the 1850s, the question was before the United States Supreme Court, linked to its efforts to define Congress's authority pursuant to the commerce clause. Could a state regulate interstate migration, or was that power reserved exclusively for Congress?

In the nation's high court, a right to interstate travel was emerging. As early as 1841, in *Groves v. Slaughter*, the Supreme Court asked whether individual states could regulate the interstate travel of free African Americans but left the question open.³¹ The issue of free black travel again undergirded the court's thinking in the 1849 *Passenger Cases*.³² Reviewing the constitutionality of Boston's poor law and New York's quarantine law, the companion cases linked the jurisprudence of interstate commerce, free black Americans, and the right to travel.³³ The initial articulation of a constitutionally guaranteed right to interstate travel was contained in Roger Taney's dissent: "For all the great purposes for which the Federal government was formed, we are one people, with one common country. We are all citizens of the United States; and, as members of the same community, must have the right to pass and repass through every part of it without interruption, as freely as in our own States."³⁴

Free black people were, however, an exception. Taney's use of the term "citizen" was a sign that the right to travel was qualified. Indeed, not one of the seven justices who wrote in the *Passenger Cases* argued for an unfettered right to travel. Instead, they offered a litany of those excepted from said right: Convicts, felons, vagabonds, paupers, the infirm, and slaves. No justice objected to the exclusion of free African Americans and the curtailment of their right to travel. In Taney's view, no scheme, be it a state regulation, an act of Congress, or an international treaty, could permit "Great Britain to ship her paupers to Massachusetts, or send her free blacks from the West Indies into the Southern States or into Ohio, in contravention of their local laws."³⁵ Essential to the development of the court's reasoning was the threat that the movement of free black Americans was said to pose.³⁶

In the local courthouse, free black men and women posed another version of this question. If there was a right to travel, how might they act on it? The answer was to make an appearance before the city's criminal court. The courthouse atmosphere also presented a challenge to asserting a right to travel. Notorious, for example, was the courtroom of Judge Henry Stump, the sole judge to preside over the city's criminal court after his election in 1851. Later, in 1860, Stump would be removed for being drunk and sleeping on the bench.³⁷ Until then, it was Stump's careless regard for free black people that drew criticism from the state's court of appeals. In 1859 Thomas Watkins had been convicted of larceny.³⁸ Stump's sentence exceeded permissible guidelines and directed that Watkins be sold out of the state. The high court overturned the sentence, noting with concern that the court record had been improperly tampered with in an attempt to shield Stump from rebuke.³⁹ But even with his conviction overturned, Watkins had to use a writ of habeas corpus against the warden of the city jail to secure his liberty. He avoided Stump during this last matter, filing the petition with circuit court judge Z. Collins Lee.⁴⁰ Neither success nor the promise of success awaited black litigants in the Baltimore City courthouse.

Entering Stump's courtroom, Baltimore's free black permit seekers must have steeled themselves for the possibility that their dignity would be

challenged. Still they went to court, with their seriousness of purpose awkwardly juxtaposed against a legal culture that did not always regard them with respect. They carried their petitions, slim formulaic documents that reveal the rhythms of their lives and the scope of their ambitions. Permitted travel took people to Virginia's spas for work. It took them to New York and Philadelphia, where family awaited them. Some travelers anticipated journeys that would begin at the port. They were bound for Trinidad, Haiti, and Liberia but took care to ensure their right to return should their ventures fail. Travel permit petitions were built on carefully cultivated networks. Applicants held in their hands endorsements from white Baltimoreans who vouched for their respectability and the worthiness of their journeys. Reputations were traded, black and white people alike claiming qualities that would impress a judge. Charity Govan and William Henry Calhoun both chose June 26, 1854, as the day to submit their travel permit applications. It was not a day of particular note in Baltimore. In the city's livestock market, cattle prices continued to decline while hogs were plentiful.⁴¹ The Baltimore Board of Health reported that city's health was overall "very good," although it cautioned that infant mortality was on the rise.⁴² Plans were well under way for the city's annual Fourth of July parade.⁴³ The city council considered matters ranging from fire company petitions and road construction to the erection of a footbridge.⁴⁴ A local paper deemed weather the "engrossing topic of conversation." Unseasonable temperatures led to the hottest days in nearly two years.⁴⁵

Early that summer morning, Calhoun and Govan were among those making their way along the city's busy streets, and it is likely they did not stand out in the crowds. A visitor from England, Alfred Pairpoint, remarked, in unflattering terms, on the many people of color he observed on Baltimore's streets, from the wharf to the markets. At work and at leisure, their ubiquitous presence was a contrast to what he had observed in New York and Boston.⁴⁶ Govan and Calhoun headed to the courthouse; their purpose, to obtain permits for the right to travel. Calhoun likely began the day at his home on Arch Street in Baltimore's densely populated Fourteenth Ward, where he lived with his wife, Mary, and their nine children. The forty-eight-year-old was a member of the city's small class of skilled African American workers, having operated as a blacksmith since at least 1848.⁴⁷ Govan traveled from the opposite side of the city, the west side's Fifth Ward, with another woman named Charity Govan Johnson, likely a relative.⁴⁸ Govan was also a skilled artisan, with a reputation for producing fine gilt objects.⁴⁹

Just as they were ordinary figures on the city's streets, the presence of Govan and Calhoun in the courthouse would not have given most Baltimoreans pause. They were among scores of Baltimoreans taking part in the court's formal proceedings. The docket that day included a dispute over the opening of a city street, Cecil Alley, and the grand jury had just returned an indictment in a case of wrongful death. Nearly twenty criminal defendants would be called to answer to various charges, including larceny, intent to commit rape, and

murder.⁵⁰ Govan and Calhoun were to have their applications for permission to leave the state heard by Judge Stump.⁵¹

The terms of an 1844 statute drew them to the courthouse. The statute required those free black Marylanders intending to leave the state to secure the court's permission if they planned to return. Specifically, if intending to leave the state for more than thirty days and later seek reentry, free black Marylanders were required to secure a travel permit from the criminal court.⁵² The law was a double-edged sword. It conferred legal standing while also distinguishing free blacks entering the state as different from and indeed inferior. Newcomers were discouraged from coming to the state, and long-time residents found their mobility restricted. In both cases, those who entered Maryland without leave of court were subject to arrest, fine, or sale into servitude.⁵³ The statute also required an applicant to provide the written endorsement of "three respectable white persons, known to be such by the judge or judges of said court."⁵⁴

While the obstacles they faced were formidable, the court record suggests that both Govan and Calhoun were summarily granted the permits they sought. Each must have stood before Judge Stump and stated the purpose of his or her travel, although these details the clerk failed to record. Govan spoke for herself and her companion; perhaps she was traveling to visit family, a reason typically offered by permit seekers. Calhoun proposed to travel alone; perhaps he sought work, another commonly proffered rationale.⁵⁵ In these cases only the clerk's notes have survived. But among the loose permits sheets from 1845, we see the range of reasons permit seekers gave for traveling outside of Maryland. Robert Murray was a musician who planned to work in the resorts of White Sulphur Springs, Virginia. John Jones wished to visit "his family residing in Gettysburg, Pennsylvania." Julia Prout was headed to New York "to attend to her husband who [was] sick in that city." Harriet Adams also sought a permit to go to New York, where she would "see her sister & and brother." Ann Boyer was on her way to visit "her husband a cooper by trade who is now working in Pennsylvania near Chesnut Street." Thomas Watkins's application was more unusual. He received a permit to leave Maryland "for the purpose of preaching & lecturing on religious & temperance to his own color."⁵⁶

Obtaining a travel permit rested on negotiations that produced the necessary endorsements. What sorts of relationships did free African Americans have with white men such that they would stand together before the court? Permits from the late 1840s evidence the important role that employers played in supporting black permit and license seekers. Often applications were expressly endorsed with phrases that underscored the employer-employee context for the application. These were negotiations that turned on familiarity and a delicate dependency. Employers served as patrons whose support of a permit application was both a reward for loyalty and a promise of protection. Exploiting such patronage relationships appears to have been one strategy by which free black men and women secured the permits and licenses they needed.

By the 1850s, this picture had changed. The permits granted to Govan and Calhoun reveal how patronage and paternalism had been replaced with contractual arrangements, and employers displaced by lawyers, clerks, and justices of the peace. Baltimore was a city without African American lawyers.⁵⁷ Lawyering was a livelihood for white men, one that occasionally meant some white lawyers stood up for the interests of free blacks. The same men were just as likely to promote the enforcement of black laws or property rights in persons, should the opportunity arise.⁵⁸

Charity Govan chose her supporters from among the city's mature political leaders. Among them were brothers David and John Stewart, who had long practiced law in Baltimore. David Stewart had served in both the state legislature and the US Senate in the late 1830s and early 1840s and was well known to the court, but not only as a legislator and practitioner. Stewart had long accepted fees for work done on behalf of African American clients, and the Stewarts worked as brokers for enslaved people who sought manumission by way of self-purchase.⁵⁹ James Buchanan also signed on Govan's behalf. He was a justice of the peace who was by statute authorized to accept a fee for such a service.⁶⁰ What Govan paid her endorsers we cannot say. But it was enough to elicit an agreement from these courthouse regulars.

William Calhoun's references included two of men – George William Brown and Hugh Lennox Bond – who are remembered as important political allies to free people of color. Brown's reputation stemmed from his successful defeat of proposed black laws. In 1842 he thwarted the consensus at a Maryland slaveholders' convention that would have imposed new, more stringent laws on free blacks.⁶¹ Hugh Lennox Bond was a twenty-four-year-old lawyer and Know-Nothing Party activist. His signature on Calhoun's application was a modest gesture of alliance. But in the post-Civil War era, Bond would, as a state court judge and Radical Republican, be an advocate for the equal citizenship of black Marylanders. He became a celebrated supporter of black suffrage, and from the bench operated as an ally to those black Marylanders making rights claims. For example, Bond declared the state's indenture contracts unconstitutional, a move that buttressed African American claims for familial autonomy in the years after the Civil War.⁶² Attorney William Talbott, whose firm was located near the courthouse, provided Calhoun's third and final signature. He does not appear to have wholly shared Brown's and Bond's views about free people of color, but he was not uninterested, serving on the board of the Maryland State Colonization Society.⁶³ Would he have preferred that Calhoun leave the state permanently? That seems likely. But Talbott also saw value in encouraging free people of color, while in the state, to live pursuant to the law.⁶⁴

Govan and Calhoun presented the requisite recommendations, which in both cases were signed by members of the bar. Without remark, the court granted each the right to leave the state and later return. Of their travels little more is known. Calhoun returned to Baltimore and resumed his work as a

blacksmith.⁶⁵ Govan also came home to Baltimore, settling back into the same Aisquith Street house where she remained until her death in 1878.⁶⁶

Rights were not, for Govan and Calhoun, edicts set out in governing documents or high court pronouncements. They were not claimed by way of speeches from a podium or letters penned to an editor. Instead, they were secured through more ordinary acts. They used their cultural knowledge and skills to gain the “enforcement of potentially favorable laws.”⁶⁷ All parties to the proceedings expected their travel permits to function with the force of a right. Govan and Calhoun expected citizens and constables to defer to the permit terms. Their white supporters signed their names expecting that they would carry weight with the court and give the permits authority. Judge Stump expected his orders would be obeyed should the permit holders find themselves questioned. And judges and juries, in Maryland and beyond, were expected to honor the right of men and women like Calhoun and Govan to move between states.

The case of barber Thomas Harvey suggests how the letter of the law did not determine the right to travel. The men who stopped him hoped to profit from Harvey’s circumstances: he was subject to \$50 per week penalty for every week he was out of the state and one-half of any fine collected was to be paid directly to those who had turned him over to authorities. The total fine of \$600 would bring destitution to the Harvey family, and Harvey himself faced the prospect of being sold into slavery. The case was heard by a Baltimore jury. Supporting witnesses described Harvey as an “inoffensive, industrious and very worthy colored man.” Harvey, whose family had remained in Baltimore, had traveled to Philadelphia “chiefly on account of his health,” newspapers report.⁶⁸

What happened next would have disappointed lawmakers in Annapolis, but it suggests how rights were created locally. The presiding magistrate dismissed the case “for want of jurisdiction,” ruling that only courts (and by inference not magistrates) could decide such cases. The magistrate denied his own authority and dismissed the charges. Harvey endured an ordeal – arrest, a trial, and the threat of punishment – that reinforced the value of a permit. But his exoneration showed that Baltimore’s officials were prepared to bend the law. Harvey remained in Baltimore, and could be found years later still operating his barber-shop on Hanover Street.⁶⁹

Officials in Baltimore were not the only ones in Maryland who concluded that the act of traveling could give rise to a right to travel. Pardon petitions evidence the tension between the provisions of state law and how local officials thought travel should be regarded. To some, a scheme that interfered with the need of black people to travel presented an imbalance that could be adjusted. Richard Grason, state’s attorney in northern Cecil County, saw more than his share of such disputes. His jurisdiction bordered on the state of Delaware, and free black travelers were especially at risk when crossing into Maryland from a neighboring state. Grason twice petitioned the governor, asking that a black

man and a black woman who had reentered without travel permits be excused from prosecution. He argued that the circumstances of both travelers should be deemed outside the law, citing the worthy purposes of their trips, the support expressed for them by local white citizens, and their respectable characters.⁷⁰ An attorney and the son of a former governor, nothing about the politically ambitious Grason suggested he was especially allied with free black people. In fact, he would go on to actively support the Confederacy during the Civil War.⁷¹ Still, his sense that a black law that inhibited travel invited disorder in his county served as an opening into which free African Americans in Cecil County and in Baltimore stepped. Permit requirements were compatible and even extended protection to their travel for work, family, and health, and later their return to Maryland.

Gun ownership was no less fraught than travel. Again, black-law license requirements made black Baltimoreans an exception to the city's general rule. The rule for firearms was that there was no rule: guns in Baltimore were plentiful, frequently used, and oftentimes essential tools in the work of politics. But black Baltimoreans had to request permission from the Circuit Court to own firearms. Like those seeking travel permits, they were required to secure the signatures of three "respectable" white references – very often, lawyers. Finally, they appeared before Judge Z. Collins Lee, who, in open court, inquired about each applicant's reputation, purpose, and general suitability for gun ownership. Once successful, gun license applicants returned to their neighborhoods with the right to own a gun, a license authorized by the court, and a story to tell.

Practice in Baltimore diverged from general law and custom by putting guns in the hands of African Americans. Black gun ownership generally was restricted throughout the South, owing to varying concerns. The prospect of gun ownership raised expectations that free black men would participate in Southern state militias, something long barred by law. In contrast, black militia service had caught on in the North. Between 1848 and 1860, at least twenty independent black militia companies had been formed in New York, Ohio, Massachusetts, Rhode Island, Pennsylvania, and what was known as Canada West, now Ontario. Nevertheless, the companies were controversial. In 1850 Canada's black militia was disbanded. In Ohio, a state constitutional convention in 1850–51 became embroiled in a debate about whether to strike the word "white" from provisions related to military service. Massachusetts was home to the most sustained support for black militias. There, free African American leaders maintained independent militia organizations throughout the 1850s.⁷² The questions they presented resurfaced time and again before Maryland lawmakers, first in a constitutional convention and then in petitions to the legislature. Baltimoreans watched this and, as William Watkins put it, asked: "We have colored lawyers, physicians, and teachers; why not colored soldiers?"⁷³

Legal analysts allied with the abolitionist movement saw a clear relationship between gun ownership and rights. Legal commentators like Joel Tiffany

interpreted the US Constitution's Second Amendment as providing for just such a right. Tiffany was a lawyer and reporter for the New York Supreme Court who came of age in antislavery Ohio.⁷⁴ It is not clear how widely his ideas circulated; if they did so it was only clandestinely. His was a seditious view and it would have been folly or worse to invoke Tiffany in a Baltimore courtroom.

Free black gun owners were more often said to pose a threat, that of lending assistance to slaves seeking freedom. Just seventy-five miles to the north and east, the 1851 "battle for liberty" in Christiana, Pennsylvania, suggested just that. The incident began when a Baltimore slaveholder, Edward Gorsuch, set out with a posse and federal marshals to recapture fugitive slaves who had escaped from his wheat farm. Two slaves had taken refuge in Pennsylvania at the Lancaster County farm of William Parker, a free African American. Parker was an abolitionist, a member of the local black self-protection society, and a gun owner. Gorsuch's band confronted Parker and his allies: "One hundred to one hundred and fifty armed blacks all of whom are free except three . . . and there was considerable firing of guns and other fire arms."⁷⁵ The result was grave. Gorsuch was dead, and armed African Americans had repelled those who claimed property in their persons.⁷⁶ News from Christiana filled Baltimore's papers. Commentators decried the killing of a slaveholder and lamented the hostility that Pennsylvanians held for Marylanders. Six thousand Baltimoreans gathered in Monument Square for an "indignation meeting" during which they vilified those who had abused the constitutional rights of Southern slaveholders.⁷⁷

Marylanders watched closely the proceedings that followed. Thirty-eight men, black and white, were indicted for treason. But only one was tried, and that trial provocatively demonstrated how the courtroom was a space for the arbitration of wrongdoing and the assertion of citizenship. Castner Hanway had been among the men who helped Parker defend his farm and the slaves sought by Gorsuch. The courtroom proceedings were, for Maryland's attorney general Robert J. Brent, a world turned upside down. Free black men received courteous if not preferred treatment, and were "admitted through the Marshal's office into the Court room, when crowds of white citizens were kept outside of the door." A black witness, key to the prosecution, declined to testify and confessed that he had not been present during the incident. The attorney general explained that the black men present appeared to orchestrate their presence in an effort to confuse and perplex witnesses: "These negroes were seen sitting in a row supported on each side by white females . . . [E]ach of the negroes appeared with a new 'comfort' around their necks, their hair carefully parted and their clothing in every respect alike, so as to present an uniform appearance, to the eye, as far as possible."⁷⁸ The right to defend themselves, invoked by Parker and his comrades in the streets, extended into the courtroom, where their legal claims were supplemented by performances of belonging and respectability. A capacity to bear arms, and use them, was one linchpin in that right.

In Baltimore, although guns symbolized a capacity for self-defense, they were also used in hunting, and it was not unremarkable for free black people to exercise that privilege. In the antebellum South generally, conducting “a hunt” was one embodiment of white supremacy. Slaveholders organized this leisure activity and included slaves in the hope of engendering a sense of awe for white mastery. Those enslaved people who gained the possibility of hunting alone redefined the ritual’s purpose. For them, game and fowl became key sources of food, items for trade, and independence.⁷⁹ Southern elites decried allowing blacks access to hunting deer, pheasants, or trout, as that led to greater autonomy.⁸⁰ In mid-nineteenth-century Maryland, hunting and fishing were no longer practices governed by the right of citizens to use public land. Indeed, heavy regulations were the order of the day by the 1850s. Still, the possibility that black men could own guns and dogs, and use them to hunt, troubled the meanings of race and freedom.⁸¹

Self-defense. Self-sufficiency. Gun ownership spoke clearly about how some black Baltimoreans may have appeared to the city’s white residents. Permits were routinely granted, with no commentary in the court records or the local newspapers about concerns or fears. Statutory restrictions on black gun ownership enacted in Annapolis never suppressed black gun ownership and never led to prosecutions for illicit, unlicensed gun possession. Striking are the many instances in which black Baltimoreans were charged with using a gun in the commission of a crime without being punished for failing to secure a license to own the weapon. Daniel Hunt fired a pistol at Robert Murray with the intent to kill.⁸² Frank Weeks attempted to shoot Alexander Jackson, “snapping the weapon in his face.”⁸³ Dennis Watkins shot Hiram Young through the arm.⁸⁴ William Keys assaulted his wife, Mary, and shot her, intending to kill.⁸⁵ These free African Americans possessed guns and used them in the commission of crimes. Still, they were never charged with having failed to secure a license. Gun ownership was not a right as prescribed in the constitution or a statute, but it also was not a wrong.

Some license seekers come into view enough in the records for us to explore the meaning of such court-issued documents. Samuel Hardy and Nathan Bowers left traces of their purpose, returning to the courthouse year after year to renew their gun licenses. Their court appearances appear routine in the clerk’s minutes. They appeared together, one after the other standing before Judge Lee.⁸⁶ The men were longtime residents of Baltimore. Forty-one-year-old Bowers was a carter and a resident of Baltimore’s Twelfth Ward, where he lived with his wife, Anna, a seamstress, and their five children.⁸⁷ Hardy was another “free man of color,” and was married with four children.⁸⁸ Both men made their living as a carters, and Hardy appears to have been the older and more experienced of the two.⁸⁹ Each man appeared with references from white men in hand. Attorneys Richard Battee and John Ing recommended that both Bowers and Hardy be granted permission “to keep and carry a gun for one year.” The clerk’s notes offer a summary: Permission was granted and with

that, the court adjourned. Bowers and Hardy left the courthouse having successfully extended their right to carry a gun.⁹⁰

Also among the petitioners was Alexander Martin, who sought licenses to own a gun and a dog. These documents would equip Martin to leave the city limits to hunt the deer and fowl that inhabited Baltimore's environs. Martin was a thirty-year-old porter who lived with his parents. His father was a modestly prosperous bookkeeper and church activist who had participated in the era's African American religious conventions.⁹¹ Martin was recommended by two local attorneys – George Williams Brown, who had also been a reference for William Henry Calhoun's travel permit, and Stewart Brown, a twenty-five-year-old lawyer. The clerk's docket concludes: "Permission is granted to Alexander Henry Martin a free negro to keep and carry a gun and dog for one year."⁹²

Men like Bowers, Hardy, and Martin also sought to own guns as a logical response to Baltimore City's violent climate. Bowers likely had in mind that just a few years earlier, in the summer of 1854, he had been the victim of an assault and beating at the hands of a white ship's pilot, Joseph Hebb.⁹³ And in 1856 he had managed to fend off an attack by two black men. More generally, a wave of violence that often included the brandishing and discharging of guns swept through Baltimore in the 1850s. Historians have explained this violence as largely tied to the Know-Nothing Party, which promoted the organization of political clubs with names like the Rough Skins and the Blood Tubs and wreaked havoc on public places and private homes. A corrupt and ineffectual police force added to the danger on the city's streets, particularly in the evenings. Election days were especially deadly. In 1856, court business was halted altogether when the mayhem associated with an election day caused city authorities to shut down the courthouse.⁹⁴ By the day's end, 8 people had been killed and 250 wounded.⁹⁵

The desire among free black men to own guns for their own security was a value widely shared in Baltimore. They did not have to maintain their guns clandestinely at home, and they even used them without fear of reprisal. However, concern that the state law could be invoked may have been one reason such men sought gun licenses. Although local discretion was exercised by the authorities in Baltimore, a change of climate or turn of events could have led constables and watchmen to enforce licensing requirements, leaving only those who had secured court permission safe from prosecution. Also, there was likely some status associated with license holding. Brandishing a gun along with a license may have distinguished men like Bowers, Hardy, and Martin as respectable neighbors and legally savvy community members.

The most important effect of securing a gun license was how that license, once in hand, could take on rights-like qualities as an absolute claim to carry a gun.⁹⁶ For free African Americans, the license had a potent authority attached to it: that of its three white references and Judge Lee and the Superior Court. The document rested on the reputations and the authority of white men. To

display or otherwise advertise a license foregrounded more than the mere fact of gun ownership. It also advertised the holder's capacity to secure alliances with white men, navigate the courthouse maze, and then stand up to the scrutiny of Judge Lee. There is no way to tell how this knowledge may have functioned on Baltimore's streets. It is also difficult to envision a scenario in which a license might have been refused or disregarded. To do so would have been to challenge the court as well as the free African American license holder. What constable, watchman, or sheriff was prepared to directly question that legally crafted alliance? A free black man who carried his license and his gun might just have appeared like a man who had a right to do so.

A puzzle emerges from these examples. Unlicensed gun owners faced no formal charges connected with gun possession, even when charged with using a firearm during an assault or attempt to kill. There was little threat of being punished. So why did some men take the trouble to procure a license? Perhaps the value was symbolic as well as material; the courtroom scenes in which licenses were issued suggest this was significant. The Superior Court was a theater for the enactment of more than one performance of citizenship. Naturalizations were explicitly such acts. Immigrant men and women appeared before Judge Lee to renounce their prior allegiances – to a king, an emperor, or a state. They took an essential step toward becoming United States citizens by declaring their intent to naturalize, and then became immediately eligible to vote in local elections. Black men could approach citizenship only indirectly. They could not naturalize, nor could they vote. They could, however, participate in the courtroom. Gun permit applications in hand, they stood before the court in the same place that those seeking naturalization occupied. Looking on was a crowd of lawyers, clerks, and spectators. And they came away with their own piece of a citizen's bundle of rights, the right to own a firearm.⁹⁷

Permit and license requirements were intended by lawmakers to be a burdensome scheme that curtailed the liberties of free black people and discouraged them from remaining in the state. For some, this was sufficient reason to leave Maryland and migrate north, west, or across the Atlantic to Liberia. For most, black-law requirements represented an opportunity to study both the text of the law and legal culture. How one regarded the black laws depended on one's understanding of how they were enforced and by whom. Some may have derived confidence from the knowledge that certain laws, such as gun license requirements, went unenforced. However, when enforcement was uneven or episodic, as in the case of travel permits, greater resources were required to avoid prosecution and penalties. Still, for all license and permit seekers the courthouse was a place of opportunity. Free black people used black-law proceedings to develop their legal acumen, collaborate with white allies, assert their claims in a public setting, and alter their standing in the city's streets and alleys. However, assembling a bundle of rights, rights that many associated with citizenship, was an incremental and unsure endeavor. Removal still threatened, even as rights claims aimed to keep it at bay.

Black laws remained much reviled by African Americans. The expansion of their subject matter and their reach reflected lawmakers' fears of the threats that free African Americans were said to pose. Some hoped that stringent black laws would cause free black men and women to abandon the United States. This was a circumstance worthy of lament, especially as restrictions on the economic, social, and political lives of black Americans fueled the perception that they were not citizens at all. Gamaliel Bailey, a white antislavery commentator and newspaper editor, decried how the deprivations brought about by black laws were also denials of citizenship:

What are the facts? The free negro . . . is denied every privilege of citizenship. He cannot hold an office. He cannot vote. He cannot testify in court, or sit on a jury, and is therefore at the mercy of every knave with a white skin. A free negro cannot keep a gun; he cannot go out at night, without a pass from a white person who may have the charity to assume the office of a master. He cannot go out of his neighborhood without carrying free papers, on pain of being arrested and sent to prison. He cannot move from State to State, in the South, under any circumstances, without forfeiting his freedom. This and more is the law.⁹⁸

But Baltimoreans knew otherwise – at least in part. Political rights eluded the city's black men and women. Still, they could keep guns. They could also travel, even from state to state. If citizenship was a bundle of rights, as Bailey suggested, then black Baltimoreans were in possession of some part of that bundle. Bailey's purpose had been to blame Southern lawmakers for keeping free black Americans in "ignorance and disgrace." He warned that such laws prevented free black people from training for "political freedom," while making Southerners despots no better than those of "Russia, Austria, or Turkey." Black Baltimoreans likely took issue with Bailey's characterization of them as ignorant and disgraced. As they traveled with a permit or carried a licensed gun, they were that much closer to citizenship.

To Sue and Be Sued

Courthouse Claims and the Contours of Citizenship

The first chapter of Charles Dickens's novel *Bleak House* greeted readers of *Frederick Douglass' Paper* in April 1852. Douglass had in mind building a readership and keeping his weekly afloat, and the English novelist was at the height of his popularity. Dickens was a friend of the antislavery cause and attracted a like-minded readership. Some among Douglass's subscribers questioned giving over the paper's pages to a work of fiction.¹ Undeterred, Douglass remained committed to the project and, over the course of twenty months in 1852 and 1853, serialized the whole of Dickens's novel.² Why would black Baltimoreans have wanted to read *Bleak House*? Some might have been drawn to the novel by Douglass's endorsement. Others would likely have remembered Dickens's 1842 visit to the city and his subsequent critique of slavery in Baltimore, published in *American Notes*.³

Through Dickens, readers of Douglass's weekly were introduced to a satirical view of problems well known to free black Americans: debt and apprenticeship. Dickens's story made plain the necessity and the excesses of credit in the nineteenth century, extending humorous sympathy to those who found themselves beyond their means while warning against those who would see in the losses of others an opportunity for their own gain. Though set in London, the novel resonated with the lived experience of free black Americans, for whom credit and debt were foundations of the associational economy of which they were a part. Dickens never dwelt long on the high end of elite law-making. Instead, he wrote from his experience as a legal clerk, giving *Bleak House* an intimate and textured quality borrowed from the nitty-gritty details of courtrooms, chambers, and lawyers' offices. In his fictional telling, few fared well in a world swirling with uncertainty and avarice, and the novel underscored how those who incurred debt were vulnerable not only to creditors. Indentures also threatened. Children whose families had little means or otherwise fell on hard times would be put to labor, as apprentices whose true

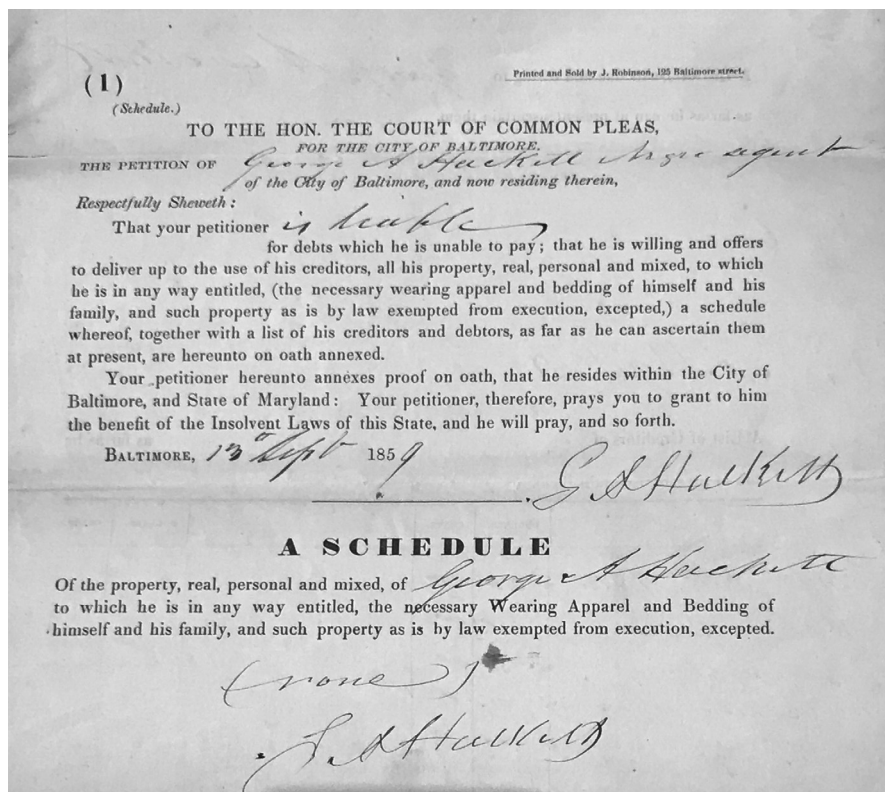


FIGURE 7.1 Insolvency petition for George Hackett. Insolvency often marked a low point in the lives of black laborers, craftsmen, and entrepreneurs. Debt-relief proceedings rested on a right to sue and be sued, and then went further by subverting the usual prohibitions against black petitioners' authority over white parties. Image courtesy of the Maryland State Archives.

compensation was little more than sustenance. They were vulnerable most of all, in Dickens's view, to a legal system that put its own interests above all else. Petitions for debt relief and challenges to apprenticeship contracts provide a paper trail that traces another reason free black Baltimoreans entered the courthouse. These proceedings had less of the discriminatory premise that travel permits and gun license applications had. Insolvency petitions and writs of habeas corpus were tools with which African Americans could bring formal grievances against whites to the courthouse. They testified against white parties, even though state law prohibited it. They even served as court-appointed trustees. In these actions, they exercised the right to sue and be sued. The result could be the extinguishment of a debt and the restoration of a reputation; it

might be the canceling of an indenture and the return of a child to family control. Black Baltimoreans used law to their own ends. Still, justice was elusive. Rights were not the only stakes in these proceedings. One might sue or be sued, or act to protect one's property, person, and family. But the outcomes of such proceedings were not guaranteed. Disappointment often followed the triumph of a proceeding well prosecuted.

In Baltimore, *Bleak House* dramas – of credit, debt, and apprenticeship, laced together by subterfuge and intrigue – were well known.⁴ Their setting was the office of the Commission for Insolvent Debtors.⁵ In 1854 Maryland standardized what had been for half a century an unstable and confusing system of debt relief. The state regularized its patchwork of general and private laws, replacing an act of 1805 and its fifty-one amendments with a consolidated statute. The result was a modern scheme that favored the forgiveness of debtors rather than the satisfaction of creditors. It imposed no residency requirements on those seeking forgiveness for what they owed. Nor did it require that creditors consent to the discharge of debts.⁶ Coupled with the terms of the 1851 state constitution, which abolished imprisonment for debt, Maryland's approach to insolvency relief extended benefits even to small debtors.⁷

Debtors in Maryland had new recourse, but in Baltimore their fates passed through the hands of one man, Commissioner Edward Palmer. Palmer had originally been appointed to his post in 1838 by then Democratic governor William Grason. Palmer spent more than twenty-five years, 1838 through 1864, on Baltimore's Commission for Insolvent Debtors.⁸ In 1854 the city's three-person commission was replaced with just one official, and that March Palmer was reappointed to the post by the Court of Common Pleas.⁹ He personally reviewed and affixed his signature to every "schedule," or petition, filed during his time on the commission.

Black Baltimoreans navigated the intimate exchanges of credit and debt that were the fabric of Baltimore's networks of transportation, trade, and commerce. This scene was deemed risky because many remembered a time when imprisonment for debt – said to be a trampling upon citizenship – was extensive.¹⁰ Whether they were carters, draymen, mariners, or laborers, they did not merely work. They were also knitted into financial relationships that crossed lines of color and class. Debt relief kept the economy and relationships working, providing a remedy to support household solvency and reputational health in the leanest times. Baltimore's small class of black entrepreneurs and business owners saw more than their share of fiscal ups and downs. They accumulated debts and also extended credit to others. And when, in the ordinary course of business, those who owed them failed, so did they. Questions then arose about how to protect the stability of a household and restore a reputation in order to undertake whatever new scheme was on the horizon. Insolvency petitions became one strategy. In a cross-racial

economy some creditors were bound to be white men and women. Many black petitioners who came before the commission pushed the limits of generally held proscriptions on their legal capacity, giving testimony against the interests of white creditors and serving as court-appointed trustees. Even when black men had to testify, the proceedings went forward, often securing the discharge of debts.

George Hackett's insolvency petition reflected ambition and disappointment. His coal enterprise had failed, and in 1859 Hackett became one among many dozens of insolvent Baltimoreans. In 1857, a market panic had littered the city with men no longer able to meet even modest obligations. They, like Hackett, made their way to the courthouse and before the commissioner for insolvent debtors. Their accountings – to the court, to trustees, and to creditors – told stories of a belonging that was fragmented and frail. But debt relief knew no color in its formal terms, and black men were able to expand upon their roles in the courthouse while they also grappled with the despair of hard economic times.

"Insolvency" and "bankruptcy" were terms woven through the rhetoric of black activists like Hackett. The terms sometimes carried a moral valence, serving as metaphors for the condition of slaveholders' hearts and minds. However, there was a material quality to these ideas. Economic failure for planters left enslaved families pulled apart and facing sale. Sometimes insolvency was said to be a form of vengeance visited on those who persisted in dealing in persons said to be property. These ideas mixed with lived memory in Baltimore City, thanks to the 1834 failure of the Bank of the Maryland. That collapse had presaged subsequent bank failures and the financial crisis of 1837. Closer to home, the Bank of Maryland's failure reached into the lives of ordinary Baltimoreans, whose faith in the bank was destroyed along with their savings. The city convulsed when depositors learned the full extent of their losses. In the 1935 Baltimore bank riot, angry citizens targeted the home of lawyer and bank director Reverdy Johnson, near the courthouse on Monument Square.¹¹

Many of the rights debated in political conventions and in the press were embodied in petitions for debt relief. The right to contract was affirmed as black Baltimoreans sought to collect on or be relieved of obligations incurred in the city's economic marketplace. They exercised standing in the city's courts by securing orders that provided for the discharge of debts. Even at the end of the decade, with the rhetoric of *Dred Scott* declaring them noncitizens, black Marylanders extracted from the state's Act for the Relief of Insolvent Debtors the sorts of rights that the 1866 Civil Rights Act later aimed to guarantee.¹²

For Hackett, petitioning for debt relief was but one episode in a lifetime spent constructing a public identity that mixed entrepreneurship with civic leadership. Hackett began his young adult life as a seaman, stable operator, and

coal digger.¹³ By 1850, at the age of forty-one, he had built his own business, as a coal agent for city residents and skilled artisans. He supported his wife, Mary, and three children.¹⁴ Hackett's reputation was built on his relative wealth and benevolence. At his funeral services in 1870, Bishop John Mifflin Brown of the AME Church would chronicle Hackett's long history of activism in the church, fraternal orders, and black politics, noting that his "money was spent and whole life given in a good cause."¹⁵ This dimension of his reputation had been hard-won, however. Hackett's insolvency petition paints a picture of a man simultaneously ambitious for and humbled by the possibility of commercial success.¹⁶

Debt relief petitions typically reflect some underlying events in the life of the petitioner. This was the case for Hackett, who reported a downturn in his business in the months prior to his filing in the fall of 1859. The now forty-nine-year-old businessman appeared before Commissioner Palmer, signing his name to the paperwork rather than marking it with an X, as many applicants did. Hackett was also marked as being an African American or, in the lexicon of Commissioner Palmer, a "Negro." This designation appears both in the commission's docket book and on the petition itself, all of which was recorded by Palmer.¹⁷

Hackett was not alone when he first appeared before Palmer. Documents related to the appointment of a provisional trustee fill out the scene that unfolded that day. Hackett was in the company of at least three men. There were the two who had agreed to serve as trustees in the case, city constable Daniel Weaver and a John H. Marriott, who posted a \$200 bond. Notably, Hackett himself did not contribute to the bond, as was frequently the case with black petitioners. Palmer appointed Weaver provisional trustee on the spot. A third man, William Scott, served as a witness to the trustee appointment. We know little about these men and how they came to appear with Hackett before the commission. Their presence suggests a series of pre-appearance negotiations by which Hackett secured the alliances of others.

Hackett's networks of debt and credit, constituted through his work as a coal agent, are the most vivid details recorded in the case file. His petition shows that Hackett exercised, in an everyday sense, the right to contract. Every petitioner was required to provide such details, usually in the form of a name and a dollar amount, and the debts that Hackett reported owed to him totaled nearly \$1,400. Hackett was a creditor who had extended goods and services to individuals in amounts that ranged from \$6, due from a William Carpenter, to \$757, owed by farmer John A. Lloyd. How might an individual with such extensive assets come to file for debt relief? Hackett noted in his petition that the "above debts are entirely worthless and cannot be collected."¹⁸ He had extended credit to twelve individuals and one company, all of whom were unable to meet their obligations.

Hackett was, of course, also a debtor, and his list of those who had extended him credit included eleven individuals and "sundry small debts."

His outstanding obligations totaled \$925 (considerably less than was owed him). This list fills out the picture of Hackett's financial network. There were "Mr. Beatty," a blacksmith, and a Mr. Ridgley; Hackett owed each of them \$20. There were also James McCracken, the carter, who was owed \$50, and Mr. Klinefelter, a forwarding merchant, who was owed \$250. Hackett's network of credit and debt and his contractual relations extended into Baltimore's economy of black and white farmers, skilled artisans, entrepreneurs, and capitalists.¹⁹

Until his insolvency petition in 1859, Hackett appears to have been in good standing in his professional circle. When pressed, he offered a more elaborate explanation for his financial woes, an explanation that went to repairing and sustaining his business reputation. Hackett's answers to interrogatories – written questions – reveal more about his situation.²⁰ His responses came in the form of a sworn statement in which he said he had not, for example, made "enough to pay his expenses and that he became aware of his insolvency some months before his application." He denied any suggestion that his bankruptcy was premeditated or otherwise an outgrowth of long-standing fiscal mismanagement. To underscore the direness of his circumstance, Hackett reported that in the months prior to his filing he had received "for his services, [as little as] five to ten dollars per week." Nearly all of Hackett's assets were held in those uncollectible debts. He reported to the court that he had little else, "no property, besides . . . the equity . . . in his household furniture."

Hackett's answers were studied responses to a lawyer's questions. They ensured that he could not be charged with having "conveyed, concealed or disposed of his property to defraud or delay his creditors," a finding that could lead to the denial of his petition.²¹ His responses kept some details secret. For example, nowhere did Hackett explain to the court that in December 1856, seven tons of coal had been stolen from his holdings. Perhaps that case had been too hotly contested – witnesses had appeared on both sides. A man named Charles Parsons was found guilty and sentenced to three and a half years in the penitentiary.²² Instead Hackett's answers went to sustaining or repairing his reputation generally as a businessperson. He hoped they would even ensure his ability to contract and be extended credit in the same circles.

His sworn statement, intended to defeat the objections of white creditors, went unremarked upon. Hackett had in substance testified against the interest of whites, something that Maryland law generally barred free black litigants from doing. The state's insolvency act made no exception for this sort of circumstance. Hackett was so effective in his petition that his word ultimately discouraged objections to the discharge of his debts. The Trenton Coal and Railroad Company withdrew its challenge to Hackett's petition, and the court granted the petition. Hackett's debts were forgiven.

Debt relief proceedings treated some black debtors as peers to their white counterparts. Their right to make contracts and then enforce them by way

of legal proceedings was affirmed. In a sense, every black insolvency petition that listed a white creditor was an instance in which black men gave testimony against the interests of white men. Some insolvent black petitioners, like Hackett, had the opportunity to give direct evidence against white creditors, at least to the degree that they could provide testimony in support of the legal forgiveness of their debts. These moments may not have been remarked upon, but it is unlikely that they went unnoticed.

The typical insolvency petition brought by an African American in the 1850s was decided on less evidence than that in George Hackett's case. While we have the names and some bare facts about the more than one hundred black insolvency petitioners in the 1850s, few of the names are found in other sources. Many debtors were transients, at least with respect to legal culture. Their petitions have a fleeting quality, one that suggests a courthouse visit was made out of pressing expediency rather than a plan for long-term stability. Still, even those who made only a brief appearance before Commissioner Palmer were marked by the experience. Palmer used his authority and his pen to arbitrate the legal identity of black petitioners, working against a legislative scheme that had left race out of the debt-relief equation. Each was recorded as "Negro."

State law made no distinction between black and white Marylanders for purposes of administering debt relief.²³ Black petitioners initiated filings in Palmer's office, on average, ten times per year between 1850 and 1860. Their petitions were distinct only in that their total average debt was lower than that of white debtors, with an average reported amount of just under \$60.²⁴ The majority of black petitioners were laborers, men with small debts, although a number of skilled workers, seamen, and carters were among them. Missing are the professional men – bankers, small proprietors, and clerks – who appear on the lists of white petitioners. The profiles of black debtors reflect the overall economic standing of the city's African American community. They were poorer and more likely to work at the bottom of the labor market.

Typical was the 1857 petition of "Col'd Waiter" James H. Jones, who appeared before Palmer in April of that year, just weeks after the *Dred Scott* decision was reported. Jones declared that he owned no property and owed \$160 to three creditors. Cooper Peter Logue and Magistrate Basil Root posted a bond of \$100, and Logue was appointed trustee. There the formal proceedings ended, except for a September 1857 notation of "Discharge refused" by Commissioner Edward Palmer. Palmer explained: "Petitioner having failed to make his appearances hath not complied with the terms and conditions of the aforesaid law and that a discharge hath not been granted."²⁵ Jones asserted his having made contracts. He initiated a suit. Was his filing a stop-gap measure? Did he settle his debts out of court?

Insolvency petitions reveal the part that black men played in Baltimore's associational economy. Historian Tony Freyer has described how such

local networks of credit and debt operated in antebellum cities such as Baltimore.²⁶ Cash was in short supply, and credit extended across a broad network of city dwellers in which many individuals both borrowed from and loaned to others with whom they were associated by family, community, and commerce. These were relationships built on familiarity and trust between creditor and debtor. Through their insolvency filings we see how black men were both creditors and debtors, though more often the latter. Insolvency, Freyer explains, was a mechanism by which state lawmakers bolstered the local associational economy. Generally, the proceedings favored debtors.

Less clear is the degree to which insolvency provided sustained economic stability to black workers. Their petitions were declined or “refused” at a high rate, in just over 50 percent of cases, meaning that often they did not receive the full benefits that insolvency promised. Court records are not explicit about why so many petitions were refused. The commissioner used a standardized form to issue such orders. In some instances, the petitioners never returned to finalize their accounting. These same men are not easily found in other sources, such as city directories and census returns. They are less visible and perhaps more transient than other debtors. Insolvency proceedings could allow a debtor to remedy an immediate problem, alleviating pressure from creditors just long enough to regroup and relocate. By the time many petitions were denied, the debtor could have left the jurisdiction.

A remarkable feature of these many debt-relief files is the care that Commissioner Palmer took to mark each black applicant as “colored” or “Negro.” Palmer was not the first official to handle an insolvency petition. Typically, prospective applicants consulted first with a justice of the peace, who aided in completion of the paperwork. This was especially true for black applicants, the majority of whom were unable to read or write, as evidenced by their X marks in place of a signature. When they arrived at Palmer’s office, they did so with a completed petition in hand. The commissioner’s role was to review the filing, confirm it was in order, and shepherd it through court review. In the case of African American petitioners, Palmer took care to amend each and every filing: by his hand he inserted a color term in each record. The relevant statute made no distinctions between black and white debtors. Still, for Palmer the distinction was so germane that he took the trouble to mark the files of black petitioners as such, though he never maintained two dockets or filing systems, one for black and another for white petitioners.

It is common to find black litigants indicated as such in the court records of the 1850s. Other agencies, such as the federal census bureau, marked residents by race; in 1850, the possibilities for the census were *B* for black, *M* for mulatto, and *W* for white.²⁷ City directories distinguished between black and white Baltimoreans to such a degree that African Americans were listed in a separate section marked “Colored Householders.” Back in the

courthouse, most records were marked in precisely this way as well, and in some proceedings such designations were related to the substance of the underlying cases. For example, the enforcement of black laws applied only to African American Baltimoreans. Criminal laws provided for distinct punishments for those African Americans convicted of crimes. Slaves had no standing to bring many sorts of proceedings in state courts; they were marked as slaves in court records. Free black men and women declared themselves people of color in court proceedings, rebutting the presumption that they were enslaved.

In insolvency proceedings the role of trustee posed another possibility for the authority black people might exercise. David Pratt's petition for insolvency relief stretched those limits in the fall of 1856. He was a caulker by trade, a "Negro" by designation of the commissioner, and he lived with his wife, Jane, and their six children.²⁸ Pratt's East Avenue neighbors included the Reverends John Fortie and Moses Clayton, notables in the city's black activist community.²⁹ Pratt reported owning no property and had no debts owed to him. His own arrears were not modest. They totaled \$358, including \$44 owed to grocer and dry good dealer Robert Craig, \$63 to clothier Asbury Jarrett, and \$30 to a Doctor William Baltzell.³⁰ Likely, these men had extended credit to Pratt for goods and services. In January 1857, the court discharged Pratt's debts without comment.³¹

More remarkable in David Pratt's case was how the color line drawn by Commissioner Palmer was crossed when an African American trustee was appointed to oversee the case. The record of this appointment was made on a preprinted form that was typically employed in the designation of trustees. The bond was reported to have been for the sum of \$5, paid by Joseph A. Pratt and David Boston. Pratt signed with his name; Boston, by his mark, an X. Attorney Benjamin Horwitz witnessed the document and Commissioner Edward Palmer cosigned the form. We do not know any more about Boston, but it was Joseph Pratt who was appointed a trustee by the court. Pratt was the petitioner's son and was himself African American.

Joseph Pratt was assigned a role ordinarily reserved for white men. The appointment of a trustee was among the most critical dimensions of an insolvency proceeding. Private citizens had only recently become eligible to serve as insolvency trustees. The privilege had initially been reserved for sheriffs.³² Such individuals executed their duties on behalf of the state and were charged with serving for the benefit of the creditors. A trustee was bound "with surety for the faithful performance of his trust" and was entitled to control all the debtor's property, as well as his "rights and claims," which "shall vest in the said trustee." Trustees remained under the control and supervision of the court for the duration of their appointment and were subject to removal for misconduct.³³ Serving in this capacity, Joseph Pratt stood in the shoes of the court rather than those of his father. The younger Pratt occupied a status well above

that of any ordinary litigant. His authority derived from a court appointment, he served in a fiduciary relationship to the debtor and his creditors, and he remained an agent of the state for the duration of the proceeding. Nothing in state law precluded Pratt, as an African American, from serving as trustee. Still, a marginal note written in pencil on the "Trustee's Bond" form suggests that there may have been a question. Just adjacent to the signature of the witness, attorney Benjamin Horwitz, is a sloppily scrawled marginal note that reads "who will be trustee if required." During this insolvency proceeding, the white lawyer, Horwitz, stood by ready to step into the black trustee's shoes.³⁴

The discharge of debts could be at best bittersweet. Such was the case for Jonathan Trusty, who filed his initial petition at the end of what was an otherwise ordinary week in the Baltimore City courthouse. It had begun with the continued trial of "a case in equity," *Cook v. Gheislen*, before Judge Marshall of the Superior Court, and a criminal court indictment for murder in *State v. Dale*. By the week's end, juries had rendered a verdict in favor of the plaintiff in an action of debt on a foreign judgment and sent Susan McDowell to the almshouse for being a lunatic and pauper. The day after Trusty's initial appearance before the Commission of Insolvent Debtors, the local paper reported: "Nothing done in the court yesterday."³⁵

Trusty's case file suggests otherwise. Judge William Marshall's bench may have been idle that day. Still, in the nearby office of the Commission for Insolvent Debtors, Jonathan Trusty appeared before Edward Palmer, a petition in hand that listed \$133.87½ owed to thirty-six creditors. Trusty petitioned for the extinguishment of his debts pursuant to the state's 1854 Act for the Relief of Insolvent Debtors. This was, however, far more than a ministerial encounter. Commissioner Palmer made sure to note that Trusty was black, carefully adding to the caption that already read "Jonathan Trusty" the phrase "Col'd Stevedore." Palmer was noting his observation and signaled that, as a black man, this party was somehow unlike many others.³⁶

Trusty was a fifty-five-year-old dockworker who lived with his wife, eight children, and one grandchild. He signed his name to the petition. The structure of his debts was not typical, though. He listed a great many creditors, and his indebtedness to any one creditor did not exceed \$11.00. Most of the obligations Trusty enumerated were small, even when measured against other African American debtors in this period. The average amount owed was just under \$3.72. Initially Trusty reported that he had no assets other than his personal household belongings.³⁷

Sometime subsequent to his initial filing, Trusty returned to the commissioner's office. He needed to amend his petition. Trusty corrected his initial schedule to state that he indeed did own property relevant to the proceeding: "One small house on Bethel Street." Trusty's home was, in the phrasing of the petition, "subject to sale" to satisfy his debts. The court-appointed provisional trustee moved quickly to seize the house and land. Ads were placed in two local

newspapers, as the statute required, one published in the “German language” and the other the *Sun*. Subsequently, at the behest of Benjamin Horwitz, who was named permanent trustee in the case, the auction was set for the afternoon of January 14, just six weeks after the initial filing. Things appeared to be moving very quickly.³⁸

The details of Trusty’s case evidence an unusual set of circumstances. The relatively small amounts involved in each of his debts raise questions about why Trusty might have filed a debt relief petition at all. Among his creditors, for example, was a “Mr. A Kateman” to whom Trusty reported owing 87½ cents, less than one dollar. Trusty’s creditors were an organized group that acted in concert during the proceeding. Thirteen of them petitioned the court to have Horwitz appointed permanent trustee. Trusty’s creditors were also more proactive than most, working together in a proceeding in which the individual stakes were very low.

No detail of Trusty’s case is more arresting than the sale of his Bethel Street home, described in an auction notice as “a two-story and attic Brick Dwelling, with a Back Building.” The notice appears to have had the desired effect. Horwitz reported to the court that the premises sold for the sum of \$460 cash, and that after satisfying all encumbrances there remained \$146 to be paid out to Trusty’s creditors, a sum that ensured his creditors would be made whole. Left to the imagination is the scene that Saturday afternoon on Bethel Street. Horwitz reported that a Frederick Konig was the “highest bidder,” but the record does not say whether others had vied for the property or if the Trusty family was present. The conclusion was far from a triumph. Jonathan Trusty had restored some fraction of his reputation. He had been relieved from his contractual debts. But those lofty accomplishments likely felt hollow, as Trusty had reached them but lost his family home.

For men like Hackett, Pratt, and Trusty, the struggle for rights was one waged with the weapons that were legal papers. Insolvency Commissioner Edward Palmer discerned this, striking out with his pen to define the status of black petitioners. Each racialized marking functioned to distinguish and contain the legal agency of African Americans in his part of the courthouse. James Jones, as best can be discerned, used his insolvency petition to fend off especially aggressive creditors, buying himself and his family enough time to either pay their obligations another way or leave the jurisdiction. More prosperous men, like Hackett and Pratt, used paper and the authority of the court to the most complex ends of all. To make their way in Baltimore’s associational economy, they needed to be sure of their ability to receive and extend credit. They wanted to project confidence that they could enforce contractual obligations when the need arose. Insolvency proceedings were one component in their strategies for well-being and stability. Through them, they might have debts forgiven. They might also push aside race-based restrictions on their courthouse capacities. Paper was their weapon throughout. Aided by justices of the peace and even Commissioner Palmer, insolvency petitioners pressed through the negotiations

that completing complex forms and finalizing the forgiveness of debt required. Like many nineteenth-century Americans, they managed to brush away the stigma that falling short on obligations entailed. Debt, even that which could not be satisfied, provided an entrée into the rituals of rights.

Property in household goods was easier to defend than were the children of black Baltimoreans. The city's free black people might sometimes testify against the interests of white parties and serve as court-appointed trustees. But in Baltimore's Orphan's Court, where African American families challenged the terms and sometimes the very fact of their children's indenture or apprenticeship contracts, parents and "next friends" – court-recognized legal guardians – were too often disappointed. State law opened the door to white Marylanders who aimed to control and exploit the labor of black children. Some were farmers, looking to rebuild a bound labor force in a region where slavery was economically less viable. Others were merchants and small urban manufacturers who promised training in a trade in exchange for exploiting the labor of young black Baltimoreans. Still others were speculators who bought and sold the indentures of black boys and girls on an open market.

Apprenticeship's viability relied on the state's intervention into such relationships, as measured by the Orphan's Court records. Contracts were initiated (especially in the case of children said to be orphans), extended (when a young apprentice was said to have breached his or her obligations), and traded (as farmers, merchants, and manufacturers navigated their shifting labor needs to meet the ebb and flow of the local economy). The Orphan's Court also served as a forum for aggrieved free black families. They might be formally present when their children were apprenticed, lending their approval to arrangements regrettably necessary in a world in which education and training for black children were limited. Black families also became parties to the court's apprenticeship proceedings when such arrangements went wrong, which they often did.³⁹

Apprenticeship was one mechanism by which black families were regulated, especially in the realm of parent-child relationships. It also emerged as a site in which black families asserted autonomy and authority over their children. If the state appeared never to reject an opportunity to arbitrate such disputes, it did more than merely buttress the interests of white indenture holders. The state, as embodied in the Orphan's Court judge, allowed for the possibility that black parents might exercise supremacy over their children. The case of *Owings v. Williams* illuminates the outlines of such a confrontation. In June 1855 the Baltimore City Orphan's Court summoned a Mrs. Williams, demanding that she "show cause" (that is, formally present her objections) to the indenture of her son, Henry. A farmer, Caleb Owings, sought to take legal custody of young Henry and put him to work.⁴⁰ Mrs. Williams did not appear, but laborer Ebenezer Gibbs did.⁴¹ The record does not reflect what Gibbs told the court. Did he object to the substance of Owings's terms? Or did he explain that Henry was already otherwise employed, or at school? Court

records reflect that Gibbs appeared before the court as Henry's "next friend" and evidence was "adduced." After considering the information before it, the court dismissed Owings's petition. Henry was free to return to his mother and his community.⁴²

Apprenticeship proceedings were structured such that black parents, neighbors, and so-called next friends could speak on behalf of young people. Did this extend then into the capacity to control the children's lives and labor? Not in every case. The ability to sue – using the writ of habeas corpus and the opportunity to testify – may have approached the rights of citizens. The same was not true, however, for the right to ensure the proper, correct, or contractually provided-for regard for a young apprentice. A distressing range of allegations surfaced as indentures underwent court scrutiny. In *Rollins v. Anderson Brothers*, Edward Rollins complained about events that followed the apprenticeship of his fourteen-year-old nephew, John, to local merchants John and George Anderson. Rollins explained that his brother Jesse had, some thirty months earlier, agreed to place young John under the care and in the employ of the Andersons. But they had breached the terms of the contract by removing the youth beyond the city limits and transferring his indenture without the required approval of the court. John's family was alarmed. They could not locate the boy, "although diligent search and inquiry has been made." Rollins demanded that the Andersons answer for their conduct and present the body of his nephew, filing a writ of habeas corpus.⁴³ The record does not offer much in the way of details. Weeks later the court dismissed Rollins's claim, recording nothing about the fate of John. Perhaps his disappointed family continued their search unaided by the court.

The Rollins case is a story about the limits of rights. Edward Rollins indeed enjoyed a capacity to sue and to testify, in that he could openly and formally challenge the white Anderson brothers and their relationship to his nephew. There is no reason to think that the proceedings were irregular or otherwise predestined in their outcome. And still, being in possession of such rights did not guarantee Rollins a just outcome. Clearly he sought the alteration if not the rescission of John's indenture arrangement. More literally he demanded to know the whereabouts of John and to regain custody of the child. In this respect he was wholly thwarted. We would be mistaken to overstate the significance of the right to sue when such rights were never a guarantee of substantive justice.

The writ of habeas corpus proved to be a tool by which black apprentices, and their families and friends, could bring those said to be wrongdoers into the courthouse. Their testimony alone, through what began as an *ex parte*, or one-sided, claim, gave their words the force of law. The court not only permitted black witnesses in these proceedings but also regarded their assertions as true, at least for the purpose of compelling the appearance of indenture holders. Charles Snell, for example, noted in city directories as a laborer, objected to the indenture of his young daughter, seven years old.⁴⁴ Whether she had been

held beyond the agreed upon time or subjected to mistreatment, Snell, assisted by counsel, took out a writ of habeas corpus at the city's Circuit Court. The challenge was a formidable one. Snell's daughter was held to labor by the mother of police officer James Maddox.⁴⁵ The local paper notes only that the case was postponed. But by 1860 a census enumerator counted among those living in Snell's household his daughter Mary, then age twelve.⁴⁶ By court order, perhaps along with some negotiation, Snell had successfully pressed his claim.

Many disputes over apprenticeship were like that of Charles Snell, singular confrontations with an indenture holder on one side and the apprentice on another. In other cases, apprentices were caught in more deliberate webs. For Michael Moan, an Irish immigrant and nightman, apprenticeship was at the heart of a scheme that was entrepreneurial and nearly predatory. Moan bought and sold apprenticeship contracts, pressed claims for the full value of his investment, and appeared repeatedly at the center of disputes with apprentices, their families, and next friends. He leveled law and custom with cutting sophistication, making him a formidable adversary. Still, he was not immune to the challenges that black Baltimoreans put up, although they stretched the limits of their legal capacity to do so, nearly meeting Moan as equals.

Nothing in what we know about Michael Moan suggests that he had any formal legal training. He arrived in Baltimore along with dozens of Irish immigrants, identifying himself as a laborer.⁴⁷ This modest claim had likely satisfied port officials when Moan looked to sail from Liverpool to Baltimore. But there was, from the outset of his journey, nothing ordinary about Moan. He carried with him, for example, a "large double-case Gold Horizontal Watch, with plain gold chain, made by H. Storey, London," engraved "M. O. Moan" on the case.⁴⁸ Whether a sign of his wealth or his aspirations, or a souvenir of more prosperous times, the gold watch in his pocket likely made Moan stand out from the ordinary passengers. Perhaps because of this, even before departing from England, Moan got a taste of what it was like to oversee a young charge, Sarah McKenna, who was placed in his care for the voyage to Baltimore – a turn of events that may have given Moan the idea there was profit to be made from such vulnerable young workers. McKenna later charged that Moan had stolen from her. According to a notice she placed in a newspaper, McKenna had been "a lone female" who was put in Moan's care, only to have him take charge of her goods and "rifle" through them.⁴⁹

Moan and McKenna were late arrivals among the thousands who disembarked in Baltimore during the middle decades of the nineteenth century. The arrival of Irish and German migrants did as much to change the city as did the growth of the free black population. Between 1815 and 1845 approximately 850,000 Irish men, women, and children crossed the Atlantic.⁵⁰ Over the course of the 1830s, at least 55,000 entered the United States at Baltimore, while during the 1840s and 1850s as many as 170,000 immigrants arrived in Maryland; 100,000 in the 1850s alone.⁵¹ Germans, pressured by crop failures and political unrest, made up half of all immigrants to the United States by

1854.⁵² Ship manifests recorded the pace of this migration to Baltimore. In 1839, for example, fifty-seven ships made the journey from Bremen to Baltimore, more than one per week, on average. From England and Ireland, twenty-one ships arrived in Baltimore, carrying nearly 4,000 Irish passengers, in the first half of 1849.⁵³

Such large numbers might suggest that Moan's 1840 arrival on the *Ellen Brooks* should have been routine.⁵⁴ Such was not the case. On reaching Baltimore his ship was immediately held in quarantine by local officials, who suspected smallpox was aboard. They were right. A total of nineteen people were transferred to a nearby hospital in the days that followed.⁵⁵ Local residents were anxious to get the others off the ship. The paper noted that, with many passengers compelled to remain on board pursuant to the quarantine, "there was a good deal of excitement among their friends on shore . . . because they were not allowed to visit the ship."⁵⁶ One group went so far as to force its way on board. Knives were drawn and a Doctor Martin, the city health officer, was injured. The group managed to carry two passengers ashore.

Submitted well after the chaos of the quarantine, the charge that Moan had stolen McKenna's modest possessions introduces an important feature of Moan's nearly thirty years in Baltimore: He never avoided controversy. McKenna leveled her accusation in November 1840, five months after the two disembarked in Baltimore. Moan's response to McKenna's charge conveys how quickly he adapted to the city's legal culture. He explained that the ship's health officer, Doctor Martin, had taken charge of all the passengers' belongings, adding: "I, for one, sued him and received \$31.37½ for what I lost." All this played out in the pages of the daily *Sun* through advertisements paid for by Moan and McKenna. More than dollars and cents, reputations were at stake. Moan went the extra mile, swearing to his statement before a justice of the peace and annexing the statement of a third passenger, who testified that McKenna was indebted to Moan.⁵⁷ Less than six months in the city, Moan was swearing out statements before a justice of the peace, bringing suit in the city court for damages, and mixing legal and public statements to enhance his position.⁵⁸

The rights or wrongs of Moan's disputes are largely lost. They generally survive only as slim newspaper notices that suggest he was a magnet for controversy and not shy about appearing before a judge. In one instance, his pastor at Saint Patrick's Church "certified" that Moan had not caused the ejection of a lay leader from his post.⁵⁹ Thomas Davis brought suit against Moan for malicious prosecution.⁶⁰ Moan warned the public "not to receive a Promissory Note drawn by me in favor of D. Levering," for he had not received value for it, he wrote for readers of the *Sun*.⁶¹ Moan was a witness when heirs challenged the validity of Rachel Colvin's will; he deemed her "exceedingly frugal but of sound mind."⁶² During the trial of John Claggett for murder, Moan testified that he had observed the accused killer at a cattle show "shaking a pistol in his hand . . . pale and crazy looking." Moan explained he had not wanted to

cross Clagett and simply “got out of the way.”⁶³ In a long string of cases, Moan appealed the minor findings of local justices of the peace.⁶⁴ What might be termed a courthouse “regular,” Moan was a known figure whose familiarity with court personnel and procedure was likely unrivaled in Baltimore.

By the early 1850s, Moan reported to city directory editors that he was employed as a nightman, or privy cleaner; it is also known that he kept cows at his Eden Street residence.⁶⁵ And it is in records from the same decade that his connections to various African Americans become evident. Perhaps it was the work of a nightman that led Moan to begin trading in black apprentices. The job was perceived by many to be “dirty and disgusting” work that was also unhealthy.⁶⁶ While the precise organization of this work in Baltimore is not clear, it is likely that a master nightman like Moan used teams of laborers to do the hands-on work of clearing privy pits and cesspools.⁶⁷

Moan had complicated and even out-of-the-ordinary relationships with African American workers. The example of young Benjamin Hill hints at how lines could be blurred. Moan found himself in jail in the summer of 1850. With him was a “colored boy,” Benjamin Hill. The two had been arrested for assaulting and beating John Butler and his wife. When their bonds were not immediately posted, the two were jailed. Had Moan and Hill been accomplices? The fragmentary record suggests yes. And this was not the end of their relationship, although their circumstances diverged.⁶⁸ Hill would be arrested a number of times in subsequent years. He was finally sold by the Criminal Court in 1854, in punishment for his alleged wrongdoings. At that point Moan intervened, but not to extricate Hill. Instead, Moan secured an order that required the sheriff of Baltimore County to pay Moan the net proceeds of Hill’s sale as a slave convict.⁶⁹ Moan and Hill’s relationship transgressed the boundaries of master and slave, but the law extended to Moan a set of rules from which only he was positioned to benefit.

Other indenture cases had this same quality. Vulnerable apprentices or “term slaves” appear to have been relatively passive, even absent, as parties like Moan and the local courts determined who owned them and by what terms. Moan sold the indenture contract of Michael Dorsey to James Johnson, for example, after holding it for just shy of one year. How much he profited, the court record does not say. Dorsey was subsequently convicted of larceny – for stealing a watch – and sentenced to two years and six months in the penitentiary. Johnson was surely disappointed, as he applied to extend Dorsey’s term of service to compensate for his lost labor time. Dorsey never had a say, however, in the sale of his contract to Johnson or in Johnson’s application to further bind him to labor. There is no sign that the court ever heard his point of view directly. Still, the judge held against Johnson’s request, leaving him to appeal to a higher court.⁷⁰

Such complicated chains of ownership suggest that Moan knew how to skirt the trouble and expense associated with reluctant and resistant apprentices, and he likely profited from such maneuvers. In 1855 Moan purchased the indenture

contract of William Jones, a boy of twelve who was to serve until the age of twenty-four, for more than \$300. Moan explained the complex path that had brought Jones to this point. He was made “free and discharged from service and servitude in accordance with an 1832 deed of manumission” from John Berry. “Free” was a qualified term, of course; Berry then apprenticed young Jones to Bernard Campbell in 1833. Moan acquired Jones’s contract from Campbell and said he had encountered “trouble” with the young man that he described as stealing. Moan appeared before the Orphan’s Court seeking to extend Jones’s term of service, swearing that his apprentice was in the “habit of running away [and causing] much trouble and expense.” The court assented, extending Jones’s contract until 1867 and authorizing Moan to sell the young man “within or without the state.” These were stock terms that accompanied most extensions of indenture contracts; the holder won the court’s permission to sell his apprentices. And this Moan quickly did. He passed off the trouble to another Baltimorean, J. A. Lynch. Perhaps Lynch knew of Jones’s history, or the final price reflected the risk. In any case, it was not long at all before Lynch echoed Moan’s complaints. Lynch’s 1856 newspaper ad read: “Last Monday week, my servant William Jones about 16 years old [ran away]. He was last heard from in this city . . . formerly the property of Michael Moan.”⁷¹

His success in proceedings such as those involving Michael Dorsey and William Jones may have emboldened Moan. He appeared to trade in apprenticeship contracts, unfettered by whatever opposition the young apprentices themselves would have set out had they been present. Some were perhaps more fortunate, at least to the degree that they were represented by court guardians or next friends who aimed to match Moan move for move in the courthouse. They were empowered by law to bring Moan before a judge and to compel him to account for their friends and loved ones.

Henrietta Right had been apprenticed at the age of six to Charles Kuster. The terms of her indenture were typical of those approved for black children in Baltimore’s Orphan’s Court. Henrietta was reported to be “unemployed and without means sufficient for her maintenance or support.” Her apprenticeship would enable her to “learn some trade or useful business.” In return for Henrietta’s being bound to serve until age eighteen, Kuster pledged to “teach or cause her to be taught plain sewing and housework and to supply her with suitable clothing and maintenance.” Henrietta was to receive the “customary freedom dues,” and Kuster also promised she would be “taught to read during her apprenticeship or in lieu thereof [he would] give her the sum of seventy dollars.”⁷²

Kuster died in 1849 and his estate transferred Henrietta’s indenture to a William Hackett.⁷³ When Hackett died shortly thereafter, Michael Moan entered the picture.⁷⁴ It seems that Henrietta worked in Moan’s household. At least she spent her days proximate enough to Moan that she was subject to regular beatings. Henrietta’s next friend, Maria Johnson, swore out a writ of habeas corpus that brought Moan before the Orphan’s Court. Johnson

demanded that Moan account for his treatment of Right, declaring that “she has been most cruelly treated; that she has been dreadfully beaten and has been in fear of her life; that said Moan does not take that care of her or treat her as he should an apprentice.” Johnson called for the outright termination of the contract that bound Right to Moan, explaining: “He is not [a] fit or proper person to have the care of your petitioner.”

Johnson surfaces too briefly for us to determine who she was to Right, other than the apprentice’s next friend. Johnson did go so far as to consult with a local attorney, though, William C. N. Carr.⁷⁵ In this she evidenced her own legal savvy. Moan was a formidable opponent, even in the face of brutality charges. In his answer to the court, he denied Right’s allegations, explaining that he had “never treated said petitioner in a cruel manner and . . . [had] treated her in a proper manner,” disciplining Right only “when she deserved it for gross bad conduct.”⁷⁶

The court was faced with competing testimony: that of Right, a young black apprentice, versus Moan, the white businessman and property owner. Moan might have taken the position that his words should irrefutably counter those of Right. He might have invoked the state law barring blacks’ testimony against whites’ interests, thus depriving Right’s allegations of any weight unless she could produce a white witness prepared to reiterate them. But Moan did neither of those things. Instead, he worked just out of the court’s sight in an end run. Moan went to see a local magistrate and, through another *ex parte* action, “had the girl bound to him.” This did not make the allegations disappear, but it did have the effect of derailing the proceeding by depriving the court of jurisdiction. Without authority to further hear the case, the challenge concluded with a direction that the matter be “taken to the Orphan’s Court.”⁷⁷ There is no sign that it was.

Families and friends of apprentices continued to confront Moan. In summer 1855, Isabella Jolly secured a writ of habeas corpus from the city’s Circuit Court. Jolly’s aim was to secure the custody of a young girl, Mary Ann, whom she had raised like a daughter. She told the court her story. About twelve years earlier, Mary Ann had come to live with Isabella, a widow, as a child who was in a “helpless and destitute condition.” The older woman had been like a “parent and in health and sickness provided for said child whatever was necessary for its comfort.” Isabella knew her authority with respect to Mary Ann was informal. Thus, while she demanded that Michael Moan show cause for his detention of Mary Ann, she also asked the court to make her the girl’s indenture holder, binding Mary Ann to Isabella by law.⁷⁸

The writ was issued. Isabella Jolly’s sworn statement had enough force to bring Moan before the court. It did not, however, secure his deference. Moan did not produce Mary Ann. Nor did he admit to having her in his custody. The girl had “run away,” he explained, sometime after the proceeding had begun. Moan’s time to present Mary Ann to the court was extended, and he took advantage of what was a familiar tactic. He told the court that Mary Ann had

been bound to him by her mother, who was someone other than Isabella. Then he produced an indenture, a document which could be reviewed only by the Orphan's Court. As in the *Right* case, the Jolly challenge against Moan was dismissed.⁷⁹

Their capacity to sue brought Baltimore's black apprentices into the local courthouse. The testimony of black children and their next friends carried important weight in that place. And allegations of wrongdoing on the part of an indenture holder triggered the court's authority on behalf of black claimants. Black witnesses swore to instances of cruelty, mismanagement, and subterfuge. But if disputes over indenture arrangements invited black claimants to stretch the limits of their rights, they did not lead to the sort of substantive justice that most surely hoped for.

In more cases than not, especially when facing off against savvy indenture holders, black apprentices were out-matched. The same procedural maneuvers that enabled them to use the writ of habeas corpus to great effect enabled their opponents to escape scrutiny. These were likely disappointing and discouraging scenarios. The capacity to sue and be sued might elevate one to a status on par with citizens, but no outcome was guaranteed, and black children continued to disappear and to be bought and sold in Baltimore, even if this was accomplished through rules of procedure.

Among the lessons of Dickens's *Bleak House* were those about the nature of legal culture. Power in the novel was enacted through the wielding of paper and documents, rather than by way of the fist or the lash. As literary scholar Suzanne Daly explains, through documents that were "created, sanctioned, or appropriated as evidence by legal authorities," legal culture exercised "the power to derange or destroy, legally and bloodlessly."⁸⁰

This framing of the courthouse as a site of contestation is in one sense ordinary. By definition, much of what occupied clerks, judges, and juries were disputes, disagreements, and differences to be resolved. Power was not, however, delineated only through the outcomes of cases. The courthouse was saturated with the performance of authority. Even novice litigants would have recognized power as animating the place, from the deployment of specialized knowledge and language to the arrangement of space: wells and benches, boxes and stands. Power was constructed by where people were placed and from what place they spoke. Sartorial difference underscored social differences that took on heightened significance in the courthouse: well-cut clothes contrasted with the crude fabric of a laborer's well-worn pants. Some men spoke, while others determined who could speak, and when. There were those who wrote, making real the proceedings by making a record of what transpired. The demeanor of the courthouse regular – confident and at ease – contrasted with the guarded movements of those who were new and often had the most to lose during any given court session.⁸¹

Contests waged in the courthouse began with weapons of pen and ink and the production of documents in collaboration with a clerk or another

courthouse functionary. These scenes were shielded from the public gaze, conducted in second-floor offices. The register of wills recorded and safeguarded estate-related records, the sheriff took complaints, the county commissioners heard applications on public safety matters, and the clerk of the court recorded real property proceedings and issued licenses for matters ranging from marriage and the ownership of firearms to the sale of liquor and the owning of dogs. These proceedings did not broadcast their power. Still, as black Baltimoreans initiated their own claims, they found a court that was quietly accommodating.

Confronting *Dred Scott*

Seeing Citizenship from Baltimore City

Hezekiah Grice looked back from 1859 to explain his history for the readers of *Anglo-African Magazine*. Invoking the *Dred Scott* case, Grice explained how the meaning of that 1857 Supreme Court decision expanded in the months and years that followed. In his telling, *Dred Scott* did not stand only for a single decision of the nation's high court. The phrase "Dred Scott" was shorthand for a broader struggle over race and rights, one in which black Americans claimed to be citizens of the United States. One beginning of that struggle was the effort by Grice and Baltimore's Legal Rights Association in the early 1830s to win citizenship. They had been disappointed, but Grice's questions about birthright remained alive. Then, in 1857, two of Baltimore's most distinguished lawyers, Reverdy Johnson and Roger Taney, took the occasion of *Dred Scott v. Sandford* to answer Grice's questions: No, they asserted, free people of color were not citizens and they could not look to the Constitution for protection. Rather than settling the question, *Dred Scott* stood for a controversy that showed no sign of abating.

Citizenship was both the push and the pull that led free black men like Grice to take up a different life in Haiti. They believed colonization schemes and black laws in the United States were designed to press them into exile. Some suspected that these measures might soon take on a compulsory tenor. Haitian authorities, in contrast, welcomed them to a black republic that had thrown off slavery and guaranteed citizenship. Grice's encounters with attorneys William Wirt, Horace Binney, and John Sergeant had been decisive. Something in Grice's questions had been too provocative, too up-ending, or too thorny to allow for an answer, though he never speculated publicly about what their silence meant. Perhaps they were reluctant to risk their reputations in the interests of black Americans. The question of black citizenship may have been too incendiary. The political undoing of the Cherokee people's legal victories may have tempered their ambitions. Their silence left open a door through which others

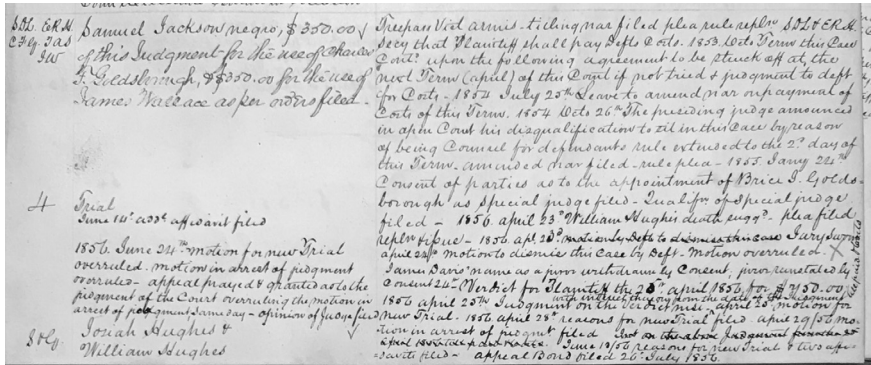


FIGURE 8.1 Docket entries for *Hughes v. Jackson*. This crowded court docket records the years of litigation that led to the decision in *Hughes v. Jackson*, a case that began when one neighbor seized the family of another as slaves. Maryland's high court rejected the logic of *Dred Scott* and affirmed the right of Samuel Jackson, a free black man, to sue in the state's courts. Justice eluded him, however, when three of his children remained enslaved until abolition in Maryland in 1864. Image courtesy of the Maryland State Archives.

might make the case for black citizenship, but Grice did not look back with gratitude. In branding the experience his “*Dred Scott* case,” Grice placed men like Wirt, Binney, and Sergeant in the same category as Roger Taney. If the phrase conveyed a lament, it also leveled an indictment.¹

Dred Scott was, of course, more than metaphor. In the months leading up to the March 1857 US Supreme Court decision, newspapers stirred the interest of Baltimoreans by reporting details of the arguments, predictions about the outcome, and more.² For those grappling with questions about race and citizenship, a ruling from Washington might be a critical piece of the puzzle. But there were many instances that demanded analysis in the weeks leading up to a final resolution of *Scott v. Sandford*. Race and rights continued to be arbitrated by the individual states, not abated by the imminence of a high court ruling. In Arkansas, a bill proposed the removal of all free people of color from the state.³ In Mississippi, the legislature passed a law prohibiting African Americans from preaching.⁴ North Carolina lawmakers considered bills that would remove black residents from the state and admit black testimony in cases where persons are tried for “exciting insurrection.”⁵ Wisconsin legislators contemplated prohibiting “negroes, mulattoes, Indians and black persons” from being witnesses in that state’s courts.⁶ Other examples suggested that local black activists influenced such deliberations. In Providence, Rhode Island, there was a black-led movement to abolish separate schools for black children.⁷ In Sacramento, California, a black convention was called to demand the lifting of a ban on black testimony against white men.⁸

Baltimoreans saw the legal distinction between free people of color and slaves further muddled in a dispute over the 1850 Fugitive Slave Act. The case was brought by a Baltimore attorney and former clerk of the city court, William Gatchell.⁹ Gatchell's son had encountered a man in Philadelphia whom the younger Gatchell believed was owned by his father.¹⁰ Philadelphia police apprehended the man, who went by the name Henry Tiffney, and whom the Gatchells said was a fugitive slave from Baltimore named Michael Brown. Gatchell swore out a claim in Baltimore, before Judge Giles in the federal district court.¹¹ During a two-day hearing before a federally appointed slave commissioner, a crowd of black residents sought to attend but was barred from the proceedings.¹² Tiffney's friends and neighbors did testify, swearing that he had lived among them in Philadelphia for six years.¹³ The court nonetheless ordered Tiffney to return with Gatchell to Baltimore. In Philadelphia, outrage over the case lingered, leading to at least one public meeting during which black activists reviewed the proceedings.¹⁴

The precariousness of the lives of black seamen was evident to all those who observed their troubles. Their ill-defined status meant that their fates would be determined in contests involving local officials, diplomatic authorities, and ships' captains. For example, when a British bark, the *Billow*, stopped over in Baltimore on its way further south, its captain, anticipating the restrictions imposed in Southern ports by Negro seamen's acts, inquired about protecting his black sailors when they were in Norfolk. He was advised that "the men could go ashore during the day, but, if on shore at night, must have a written pass."¹⁵ Later, at liberty in Norfolk, two of the ship's black sailors, William Carter and John Powell, were arrested for being absent from their vessel without leave; the mayor ordered that they be whipped. The ship's captain intervened and brokered a compromise: The men would pay the city's costs and then be charged with desertion and face penalties back on board the *Billow*. But the British consul in Norfolk balked, stressing that the men were British subjects not subject to local law. The mayor's determination, he said, was "contrary to the comity of nations, contrary to the laws of Virginia and contrary to common sense." Commentators disagreed. Editors of the *Norfolk Argus* concluded that "the Mayor in this case is in strict conformity with State Sovereignty, the maintenance of which is absolutely necessary for the preservation of the rights of the Slaveholding States."¹⁶ The *Baltimore American* sided with the consul's position: "Mr. James is sustained by the *Richmond Examiner* and will doubtless be by the Virginia lawyers generally." Whatever the correctness of a given legal position, the *American* offered practical advice for black sailors: "The moral of the matter is, however, give black seamen a written pass in Norfolk."¹⁷

The work of Maryland's colonization society added to a tense climate for Baltimore's free black population. In February 1857 the American Colonization Society met for its fortieth annual convention. While the national colonization movement had ebbed in influence, such was not the case in Maryland – and

it showed. As a first order of business, the meeting elected Baltimore's John H. B. Latrobe its president.¹⁸ Latrobe was no figurehead. His ascendancy to the organization's helm reflected the role that Marylanders played in enabling a major project: the construction of the packet *Mary Caroline Stevens*, fully equipped to transport black emigrants to Liberia. Predominant on the colonization society's 1857 agenda was conveying appreciations to those who had supported that undertaking to the sum of \$40,000. The supporters were Marylanders through and through. John Stevens of Talbot County, Maryland, had donated \$36,000 by way of a bequest, and the ship was named for his daughter. Thanks went to Latrobe, Elisha Whittlesey, and James Hall, trustees of the Stevens estate. The lawyer Frederick Brune, partner of George Williams Brown, and businessman Thomas Wilson had supported the purchase of equipment for the vessel.¹⁹ And Doctor James Hall, agent of the Maryland State Colonization Society, had overseen the building of the *Stevens*. Two hundred nineteen African Americans had been aboard the packet's inaugural journey in November 1856. For those who remained in Baltimore, the robust support for the project was a reminder that colonization sentiment in their state was alive and thriving.

In Baltimore, the *Dred Scott* case was big news. The city's daily newspaper, the *Sun*, chronicled the legal wrangling generated by the freedom claims of Dred Scott and his wife and daughters. Commentators parsed the arguments for signs of how Roger Taney's court would rule. And when the final decision came down, Baltimoreans quickly learned that the court had invalidated the Missouri Compromise, making possible the extension of slavery into federal territories. They also learned that the Scott family had no standing, as black people, to bring a suit in federal court. On balance, the rights and expectations of slaveholders expanded, while the freedom claims of enslaved people collapsed.

For Baltimore's free black community, no dimension of the case was more salient than that which declared no black person – enslaved or free – was a citizen of the United States. Chief Justice Taney concluded that only those who had been citizens of the individual states at the time of the Constitution's adoption could be citizens of the United States. To reach this decision, he set forth his own view of history. Taney found no evidence that black people had been state citizens in 1787. They generally could not vote, hold public office, or sit on juries, he explained. He declared that in the eighteenth century, black people had had no rights that whites were bound to respect – or at least they had no rights that could be enforced through the federal courts. Taney pointed out that article 3 of the Constitution restricted the jurisdiction of federal courts to specific types of cases. Dred Scott and his family had asserted their right to bring suit there by virtue of diversity jurisdiction: When citizens of two different states had a dispute, they could bring it before a federal court rather than before one or the other state's court. Scott and the respondent, John Sandford, were of different states, and therefore federal jurisdiction, Scott

asserted, was proper. But the word “citizen” proved to be what might keep Scott and all black Americans out of federal court. Not being citizens of the United States, black people were barred from bringing suit in federal court under the Constitution’s diversity-of-citizenship provision. Not only were Scott and his family barred from bringing a federal suit, so were all black Americans.

What black Baltimoreans thought about the decision in the weeks and months that followed is not easy to recover. Absent are speeches, memorials, or tracts giving evidence of their reactions. A closer look at the pages of the *Sun* suggests some of the information they may have had. From the paper they would have learned that the Supreme Court was threatening their status, a blow to those who maintained that they had rights, including the right to be free from removal. They likely recognized a shift in emphasis in the *Sun* after *Dred Scott*. Once a paper that avoided the subject of slavery, its pages included robust coverage of the subject in the wake of the decision. Those black Baltimoreans who turned to the paper for details about how the decision might affect them would have found alarming answers.²⁰

The *Sun* was widely admired for its editorial vision and skilled reporting. Editor Arunah Abell was a career newspaperman who brought to Baltimore years of experience from having established penny presses in New York and Philadelphia.²¹ In the 1850s the paper was recognized for its pioneering, quick, and cooperative news gathering that linked Washington, Baltimore, Philadelphia, and New York. Innovative use of the magnetic telegraph further extended its reach west to Ohio and Kentucky. The paper reached some 30,000 readers each day.²² Coverage of the courts and of Washington were the paper’s signature features.²³ James Lawrenson, a Post Office clerk, wrote as the paper’s Washington correspondent between 1837 and the Civil War.²⁴ The *Sun*’s coverage was timely, detailed, wide-ranging in perspective, and rarely partisan or commercial in its leanings.

Another Washington correspondent, Elias Kingman, took the lead in bringing news about *Dred Scott* to Baltimore. He set the paper’s tone when recounting the scene as Roger Taney read his opinion: “It was listened to with profound interest, and will be everywhere respected for its wisdom, and acquiesced in as the decision of the constitutional tribunal.”²⁵ Only days after the court’s finding was released, the *Sun* went out of its way to declare that “the decision, we are glad to say, seems to be welcomed in most quarters.” Although the paper did acknowledge there were critics, they were said to be without reason and downright lawless: “There are indiscreet and suicidal ravings among some of those who know no law except that of their own violent self-will and passions.”²⁶ The *Sun* also encouraged “the patriotic and conservative masses at the north [to] receive this judgment as the law of the land and govern their conduct accordingly.”²⁷ Much of this early commentary was boosterism, revealing little more than how the paper hoped the decision would be received.

In Baltimore there was an added reason to follow the *Sun*’s coverage of *Dred Scott*. The paper served as a showcase for the city’s legal prowess. Representing

John Sandford before the Supreme Court was the team of Henry Geyer and Reverdy Johnson. Baltimore had long been Johnson's home, even when his professional life took him to Washington. As the nation's foremost constitutional lawyer, he brought prestige to any case he took.²⁸ He served as a US senator and an attorney general, and he was a slaveholder at least until 1840.²⁹ Johnson was a friend to Roger Taney, and historians have shown how his legal acumen and intimate esteem shaped Taney's ideas.³⁰

Chief Justice Taney himself loomed larger than any figure in the construction of Baltimore's reputation.³¹ Taney began his career practicing in Maryland and then served as a state legislator and attorney general.³² Throughout his years in Washington, Taney remained a keenly followed and highly regarded figure.³³ He spent extended time in his family home just footsteps from Baltimore's courthouse, and sat on the United States Circuit Court for the District of Maryland. Despite the demands of the high court, he occasionally led public gatherings, including bar proceedings.³⁴ His large oil portrait hung in the city's Bar Library, thus presiding in the courthouse even when the chief justice was himself absent.³⁵ The *Sun* had long fueled Reverdy and Taney's distinction through its coverage, and the men's involvement with *Dred Scott* provided another opportunity to enhance the city's image.

As the *Sun* underscored the roles of these greatly admired Baltimoreans, it also explained the case's implications for the city's free black community. For lay readers, the paper acted as an interpreter. One editorial set out the "main propositions of constitutional law," two of which delimited the status of black Americans. In a city where African Americans lived awkwardly between slavery and freedom and were embroiled in debates about their legal status, the *Sun* left little question about what it believed the case meant as it outlined those propositions:

1. That no negro, whether he be descendant of ancestors who were slaves when the constitution was adopted or of ancestors who were free at that time, or whether he be the descendant of free negroes who came into any State of the United States after the constitution was adopted can, even though he be born within the limits of a free State, be recognized by the law as a citizen of the United States.
2. That any of the State of this confederacy may, if they see proper, confer upon a free negro the rights of citizenship within that particular State, either by the provision of their organic law or by direct enactment: but the free negro upon whom this right is conferred does not for that reason become a citizen of the United States; nor is he entitled to the benefit of those classes in the constitution which apply to those who are both citizens of a State and citizens of the United States. He cannot sue in any of the courts of the United States, nor is he entitled to claim, if he enters a State other than his own, the privileges and immunities that are there

enjoyed by those who are not only citizens of that State but also citizens of the United States.³⁶

The paper's tone was authoritative, suggesting that the court's reasoning was sound and unassailable. Thereafter, claims to black citizenship were subject to open derision in its pages. One May 1857 commentary critiqued the political visibility of Northern men like Charles Remond and Frederick Douglass. In it the *Sun's* editors remarked on "the impossibility of recognizing negroes as citizens arising from their offence to the olfactories of the white race."³⁷ It was an old joke, but one that took on new significance in the wake of *Dred Scott*.

Owing to such partisanship in the *Sun's* coverage, Baltimoreans would have to read beyond their local daily to encounter criticism of *Dred Scott*. Stinging were reports on those federal district courts that limited the opinion's effect.³⁸ The dissenting opinions from the Supreme Court decision were taking on the force of law. The United States Circuit Court for Indiana, for example, held that "a negro of the African race born in the United States . . . is a citizen of the United States . . . and entitled as such to sue in its courts."³⁹ Justice John McLean had been a dissenter in the decision at the Supreme Court.⁴⁰ Then in July 1857, while sitting on the federal Circuit Court for Illinois, he limited the scope of *Dred Scott* in the case of *Mitchell v. Lamar*. Joseph Mitchell, a free African American from Illinois, brought a suit against Charles Lamar, a white resident of Wisconsin.⁴¹ Lamar had assaulted Mitchell, who sustained significant injuries and thus sought damages.⁴² Did the federal court have jurisdiction? McLean thought it did and reasoned that Mitchell, a free black man not descended from slaves, was a citizen in that he was "a freeman, who has a permanent domicile in a State, being subject to its laws in acquiring and holding property, in the payment of taxes, and in the distribution of his estate among creditors, or to his heirs on his decease."⁴³ McLean conceded that Mitchell did not enjoy rights equivalent to those of white men. However, "it is not necessary for a man to be an elector in order to enable him to sue in a Federal Court," McLean reasoned.⁴⁴ "Such a man is a citizen, so as to enable him to sue, as I think, in the Federal Courts."⁴⁵ The debate over African American citizenship continued.

State court judges in Maine and Ohio outright refused to incorporate *Dred Scott* into their determinations.⁴⁶ In Ohio, one court confronted the question when called on to interpret the phrase "citizen of the United States" as set forth in its state constitution.⁴⁷ Distinguishing Justice Taney's opinion as limited to descendants of slaves, the court declined to hold that a free man of mixed racial descent could never be considered a citizen.⁴⁸ In Maine, by the request of the legislature, the justices of that state's high court interpreted a key provision of the state constitution which provided in pertinent part that "[e]very male citizen of the United States, of the age of twenty-one years and upwards . . . shall be an elector for governor, senators and representatives in the town or plantation where his residence is so established."⁴⁹ The question for the

court was whether free men of color could serve as electors under this provision. While the law imposed no explicit barrier to enfranchisement based on race, the court admitted that a strict application of *Dred Scott* would mean the qualification “citizen of the United States” necessarily excluded free African Americans.⁵⁰ Yet, Maine’s Supreme Court rejected such an interpretation, writing: “We are of the opinion that our constitution does not discriminate between the different races of people which constitute the inhabitants of our state; but that the term, ‘citizens of the United States,’ as used in that instrument, applies as well to free colored persons of African descent as to persons descended from white ancestors.”⁵¹ Thus, at least in some non-slaveholding states, courts declined to afford *Dred Scott* binding weight, even when United States citizenship was expressly at issue.

At least one Southern state, Mississippi, ultimately deemed *Dred Scott*’s reasoning consistent with state law.⁵² Still, the state’s high court appeared to be of two minds. In the spring of 1858 the court held in *Shaw v. Brown* that a free African American had standing to sue in pursuit of his claims as an heir.⁵³ Writing for the majority, Justice Alexander Handy explained:

But negroes born in the United States, and free by the laws of the State in which they reside, are in a different condition from aliens. They are natives, and not aliens. Though not *citizens* of the State in which they reside, within the meaning of the Constitution of the United States, they are *inhabitants* and *subjects* of the State, owing allegiance to it, and entitled to protection by its laws and those of the United States; for by the common law, and the law of nations, all persons born within the dominion of the sovereign are his natural born subjects, and owe allegiance to him, and obedience to the laws, and are entitled to protection.⁵⁴

The court acknowledged *Dred Scott* as establishing African Americans as “a subordinate and inferior class of beings” but did not go the next step and deem them without standing to pursue their claims in the State of Mississippi.⁵⁵ However, when confronted with a similar set of facts the following spring, the court embraced *Dred Scott* and deemed free black people “*alien strangers*, of an inferior class, incapable of comity, with which our government has no commercial, social, or diplomatic intercourse.”⁵⁶ Justice William Harris wrote for the majority while Justice Handy, who had written for the majority in *Shaw* just one year earlier, dissented.⁵⁷

By fall 1858, Roger Taney was uncomfortably aware that his reasoning on the matter of black citizenship was being called into question.⁵⁸ The ordinarily taciturn Taney wrote to his confidante David Perine to ask: “Have you read the opinion of the court in this case of Scott v. Sanford? I hope you find it all right.”⁵⁹ Vexed by the “abuse that [had] been lavished” on him, the chief justice took time out to privately pen a supplemental opinion to *Dred Scott*.⁶⁰ It focused on one matter alone: black citizenship at the time of the Constitution’s ratification.⁶¹ Taney thanked his son-in-law and confidante, attorney J. Mason Campbell, for approving of his “supplement.” The chief justice had hoped to

publish it “while the question is still exciting attention,” but “judicial propriety” demanded that he wait for a relevant case to come before the court. Publishing in pamphlet form was also out of the question: “I do not feel willing to write a defense of one of my judicial opinions,” Taney explained. The aging jurist suggested that its publication would come only after his death – “My executors must in some form or other bring it before the public” – which is indeed what would happen.⁶²

As he had in *Dred Scott*, Taney in his supplement relied on historical analysis to show that African Americans had enjoyed no rights from 1689, as British colonial subjects, through 1787, when the Constitution was ratified.⁶³ The opinion was no mere exercise in argumentation. Taney explained that he stood ready, should the court’s docket present him with another opportunity, to clarify and to persuade: “If the questions come before the Court again in my lifetime, it will save the trouble of again investigating and annexing the proofs.”⁶⁴

Taney scoffed at all commentary “adverse” to his published opinion. Generally, he deemed a reply not worthwhile, asserting that his critics based their views on mere “misrepresentations and perversions.” Still, the chief justice could not refrain from launching a thinly veiled rebuttal to Horace Gray’s 1857 pamphlet, *A Legal Review of the Case of Dred Scott*. Gray was the reporter of decisions for the Massachusetts Supreme Judicial Court, and would be appointed to the Supreme Judicial Court of Massachusetts in 1864 and the United States Supreme Court in 1881.⁶⁵ Gray’s analysis of the opinions in *Dred Scott* led him to conclude: “The court have [*sic*] not, and could not have, consistently with sound principles, decided that a free negro could not be a citizen of the United States.”⁶⁶ Gray challenged Taney in doctrinal terms, but then went further to question Taney’s character. The chief justice’s opinion, according to Gray, was “by no means the ablest or soundest of the opinions” in the case. Its “tone and manner of reasoning, as well as in the positions which it assumes” were “unworthy of the reputation of [Taney] that great magistrate.”⁶⁷ Taney replied that Gray’s volume was “a disingenuous perversion and misrepresentation of . . . what the Court has decided.”⁶⁸ Taney concluded his supplemental opinion on this point, urging that those “in search of truth . . . will read the opinion.” Thus, he said, he would not “waste time and throw away arguments” on commentators such as Gray.⁶⁹ Contrary to his stated indifference, Taney’s tone and the lengthy supplement suggest that he was all too cognizant of how *Dred Scott* was being called into serious question by well-informed analysts.

In a formalistic sense, there was no reason to expect a change in Maryland’s doctrine in response to a ruling that applied only to federal courts. Still, the Supreme Court’s determination invited questions about how other courts – federal and state – would incorporate its conclusions into their deliberations. The Taney Court decision may have simply been the latest volley in an ongoing debate over race and citizenship. Or it may have set in motion a series of changes that could reach into local venues.

In Baltimore, free African Americans did comment on how they saw the case, if only by way of their actions. They continued to bring disputes to court, much as they had before *Dred Scott*. They did not appear in the city's federal courts, but they never had. At least since 1850, black Baltimoreans had not used the federal courts to make claims. While Taney's opinion appeared to formally bar them, it was a symbolic barrier. Nothing changed for them after 1857.⁷⁰ The same was true in the city's local courts. There, black Baltimoreans continued their business as usual. They kept up their steady presence in the local courthouse. That their names and the charges against them continued to be marked in the pages of the city's criminal court docket is of little surprise. Still, there is no evidence in those records that after *Dred Scott* free black people in Baltimore were more likely to be arrested. Nor were they any more likely to be convicted of a crime.

Their court presence was unremarkable, at least to the eyes of the *Sun's* correspondents. Nothing struck them as out of order when African Americans initiated proceedings just as they had for years. James Jones filed for insolvency relief for his debts, secured with the sworn support of local magistrate Basil Root and police officer Peter Logue.⁷¹ Joseph Crawford and Edwin Scott challenged their detentions as a deserter from a vessel and a fugitive slave, respectively, using the writ of habeas corpus.⁷² Black church leaders continued to wrangle over ownership of property and church governance.⁷³ Confidence appears to have been high that *Dred Scott* would have no effect.

It took nearly a year for the question to reach Maryland in the case of *Hughes v. Jackson*. Baltimoreans watched from the sidelines as two free black men from Dorchester County battled over whether they had the right to bring suit in the state's courts. The Maryland Court of Appeals, the state's high court, would be asked to determine whether the logic of *Dred Scott* – which might be extended to bar free black Marylanders from state as well as federal court – should become the law of the state. No formal rule required the state court to adopt the Supreme Court's reasoning in *Dred Scott*. While the Taney court was the highest authority on the access to federal courts, Maryland's high court had exclusive authority over courts in the state. Thus, in 1858, when the lawyers for Hughes argued that free black people should be prohibited from suing in Maryland, it was an open question. Once again, the state stood at a major crossroads in its regulation of free black Americans.

Hughes v. Jackson did not pose a wholly new question. Prior cases had examined the extent to which free black Marylanders possessed rights in the state's courts. The Maryland Court of Appeals had from time to time been asked to determine the degree to which black laws, for example, might conflict with constitutional precepts. Under the leadership of Chief Justice John Carroll Legrand from 1851 to 1861, the court's conclusions were murky. Free African Americans could sue and be sued in Maryland, but actual rulings did not unqualifiedly affirm this view. The 1855 case of *Jason v. Henderson*, for example, asked whether a free person could recover damages for being

unlawfully detained as a slave. The court said yes, as a general matter. Still, Jason could not recover from Henderson based on the facts because Henderson had not detained Jason “wantonly, and without color of title,” but had acted in good faith in that he “supposed the negro to be the property of the estate he represented, and there appears a show of title for such a claim.”⁷⁴ This sort of affirmation was but a partial victory for a litigant like Jason: He had a right to sue, but his claim failed.

These types of outcomes continued even after *Dred Scott* was decided. Free black people appeared before the state’s highest court; they were never categorically excluded. The Maryland Court of Appeals issued rulings that may have pleased advocates for free black rights, but still disappointed the actual litigants. In December 1857, nine months after *Dred Scott*, the case of *Atwell v. Miller* probed the rights of free people of color in Maryland. The question in the case had been posed initially in a Baltimore trial court: Were free African Americans barred from giving testimony against the interests of white persons?⁷⁵ A 1717 state law governed the question: “No Negro or Mulatto Slave, Free Negro, or Mulatto born of a White Woman, during the Time of Servitude by law, shall be received as Evidence in any Cause wherein any Christian White Person is concerned.”⁷⁶ The petitioner in *Atwell* nevertheless attempted to introduce the declarations of a free black man, Asbury Johns, at trial. The lower court had refused his testimony categorically, relying on the early eighteenth-century statute.

Before the court of appeals, the appellant urged that Johns’s testimony should have been admitted. To resolve the question, the court might have relied on the 1717 law, but it did not. Instead, Chief Justice Legrand ruled that the defendants had not established the relevance of Johns’s testimony – he was not a principal or agent such that his declarations had bearing on the case. Had his testimony been relevant, might Johns have been able to testify? Legrand did not close off this possibility, remarking: “This view relieves us from all necessity of inquiring, whether the color of the party, whose declarations were proposed to be given in evidence, could have a legal bearing on the question in any event.”⁷⁷ The court declined to decide on the right of Johns to give evidence and left a door open. Perhaps, under another set of facts, a man of color might be permitted to give testimony against the interests of a white party, notwithstanding the terms of the 1717 law. Local tribunals were left with a bit more discretion than the trial judge in *Atwell* had been willing to exercise.

Six months later, in *Hughes v. Jackson*, the state’s high court confronted *Dred Scott* head on. Free black litigants forced the Maryland Court of Appeals to consider the degree to which the state might adopt the logic of the Supreme Court. What rights, if any, did free people of color possess in Maryland’s legal culture? Could they bring suit, or were they by virtue of their color barred from lodging complaints? In Baltimore, questions of race and rights had long simmered in the local courthouse. In Dorchester County, they boiled over.

Dorchester County sat on Maryland's Eastern Shore, a portion of the state where slaveholding remained extensive and proslavery politics dominated.⁷⁸ Between 1850 and 1860 the Eastern Shore's free black population grew by 14 percent, and many landholders in the region depended on free black laborers.⁷⁹ Still, the area's proximity to the free states generated tensions. Rumors of impending slave insurrections and rising numbers of escaped slaves generated a tense solidarity among slaveholders. Harriet Tubman carried out her clandestine raids in Dorchester County, freeing slaves from the county's farms. The escape of the Dover Eight, aided by Tubman, had rocked the county courthouse. Former slave Sam Green was arrested for aiding the group and was prosecuted for possessing a copy of Harriet Beecher Stowe's *Uncle Tom's Cabin*.⁸⁰ Local slaveholders organized around their concerns about the free black population, which was said to corrupt and demoralize slaves, making men like Hughes and Jackson a troublesome presence.⁸¹

Hughes v. Jackson grew out of years of stop-and-start litigation between William Hughes and Samuel Jackson that began in 1842 when Hughes purchased two slaves. Hughes was a free black farmer and landowner who managed his property with the help of four sons: Denwood, William, Josiah, and Robert.⁸² He had never before been a slaveholder, though it would not have been out of the ordinary for a farmer like Hughes to hire enslaved people seasonally or for specialized tasks. This changed in the summer of 1842, when he paid Catherine Ray \$280 for a woman and her infant daughter.⁸³ Hughes bargained to hold a temporary title to this "certain Mulatto woman named Mary Teackle and her infant child named Lilly." He agreed that the mother and daughter would be held only for a term of years, after which they would be free. The arrangement was set to begin on August 15, 1840, and terminate eleven years later, in 1851.⁸⁴

Samuel Jackson's version of the bargain between Hughes and Ray included details nowhere recorded in the deed. Yes, Hughes had purchased Mary and Lilly, but Hughes had done so on Jackson's behalf. Mary Teackle was Jackson's wife. Hughes had permitted the Jackson family to live together in Dorchester County while Jackson paid Hughes for the freedom of Mary and Lilly over time. Jackson later explained that he had, from the outset of the agreement, been in "possession" of Mary and Lilly. Together they had made a home.⁸⁵

For nearly ten years the bargain between Hughes and Jackson was an agreeable one, it seems. There were no outward signs of discord. Samuel and Mary's family grew to include four children: Lilly, the eldest, was followed by siblings Theodore, Dennis, and Ellen.⁸⁶ They rented a home from Hughes. Then, sometime in 1850, shy of the end of Mary's and Lilly's terms as slaves, William Hughes died. His sons Josiah and Denwood, as executors, were charged with distributing the elder Hughes's estate. Jackson and the Hughes brothers were soon at odds.⁸⁷ Was Jackson's family the property of William Hughes's estate? The parties did not agree. Samuel Jackson, feeling their liberty under threat, gathered his wife and children in an effort to escape the reach of the Hughes

family. They got as far as the town of Cambridge but were thwarted in their attempts to board a ship to cross the Chesapeake Bay to the Western Shore. Denwood Hughes intercepted the family, seizing Mary and her children.⁸⁸ It was a vexed circumstance that would take more than a decade to resolve, during which time a local trial court, the state's court of appeals, and a constitutional convention would all weigh in. Questions about slavery and freedom were most pressing for the Jackson family. Still, their claims would turn, in part, on whether Samuel Jackson, as a free black man, had a right to sue in Maryland's courts. This was Maryland's *Dred Scott*.

The Hughes's intent soon became evident: the Jackson family was an asset. The brothers sold the Jacksons' three youngest children – Ellen, eight; Dennis, seven; and Theodore, four – to a prominent and prosperous white farmer, Alward Johnson, for \$460.⁸⁹ Johnson purchased the children for cash pursuant to a bill of sale and deed that declared them to be the property of widow Mary Ann Hughes and slaves “for life.” Johnson's purchase agreement also provided for the children's eventual manumission: Ellen after eighteen years, Dennis after twenty-four years, and Theodore after twenty-seven years. There was, perhaps, some small comfort for Samuel and Mary Jackson in knowing that their children would not be taken far. Johnson's farm was also in Dorchester County.

Samuel Jackson wasted little time before heading to the Dorchester County courthouse. He hired a lawyer and initiated a string of lawsuits aimed at regaining custody of his family and punishing the Hughes brothers. First were five freedom suits filed in April 1851, just weeks after the children's sale to Alward Johnson. Jackson filed these petitions as the so-called next friend of his wife and four children. Second, filed in October 1851, was a claim against Josiah and William Hughes for trespass. Jackson sought damages for the Hughes brothers' unlawful detention of his family. Third, Jackson brought suit against Denwood and Josiah Hughes as executors of the estate of William Hughes, also in October 1851. The specific nature of this claim the court record does not indicate. Fourth and finally, one year later in October 1852 Jackson filed suit against Denwood and Josiah Hughes and Alward Johnson. Again the specific charges are not recorded. These complaints might appear scattershot, but it is more likely that neither Jackson nor his lawyer knew precisely what sort of framework the court was likely to adopt for resolving such a dispute. In this they were not wrong. Very quickly two of the four proceedings came to a conclusion. The freedom suits were marked “off” the court calendar by October 1852, while the case against the Hughes brothers as executors of their father's estate was settled: “Discontinued and Judgment for Defendant Costs.” Samuel Jackson paid \$19.53⅓ for his trouble.⁹⁰

What followed over the next years was muddled, at least when viewed from the vantage point of the court's docket books. Perhaps a combination of failed attempts at settlement combined with shifts in local political appointments

kept the parties from getting to the merits. Hughes and Jackson appeared to be nearing a settlement in the trespass case in the spring of 1852. By the fall of 1853, with no settlement in sight, the court sounded impatient when it noted that if the case was not tried the following spring, it would enter a judgment for the defendants. Another year had passed when a newly appointed trial judge announced that he would disqualify himself; he had been counsel for the Hugheses earlier in the proceeding. A new “special judge” was finally appointed in January 1855. In the spring of 1856, Jackson’s lawyers made one more push. A jury was sworn in April and on the twenty-fifth of that month it found in favor of Jackson. The Hugheses were to pay him \$750 plus interest and costs for their trespass on his family. When the case was over Mary and Lilly were granted their liberty, although the three younger children remained in the hands of Alward Johnson.⁹¹

Samuel Jackson had managed to defeat the Hughes brothers by persuading a jury that he had been wronged. His strongest evidence was likely the array of white witnesses who testified on his behalf. Jackson drew from Dorchester County’s associational networks to build his case.⁹² Among his witnesses was a Hughes family neighbor, farmer William Corkran. Jackson relied on slaveholders, including the brothers Polish and Banaman Mills. And at least one woman testified, Eliza Hicks, a widow who owned her own farm, which was run by her children and black laborers. The general climate suggested that free black men and women in Dorchester County were subject to increasing scrutiny, including in the courthouse. But a modest laborer like Samuel Jackson could still call on the reputations and authority of local whites to substantiate his claim. They knew enough about the bargain between Jackson and Hughes to make them reliable and relevant witnesses. Throughout the proceedings, no one – no lawyer, no witness, no jury member, no judge – questioned Jackson’s right to bring suit.

Jackson’s victory at trial might have ended the matter, but Josiah Hughes appealed the trial court’s ruling to the Maryland Court of Appeals, transforming Samuel Jackson’s grievances from a local matter into an occasion for testing the reach of *Dred Scott*. Hughes’s objections were partly routine. He sought to overturn the verdict or otherwise have it set aside based on technical defects.⁹³ For example, Jackson had failed to indicate in his initial pleadings that he was a “free” negro, inviting the presumption that he was a slave and thus incapable of bringing suit.⁹⁴ Hughes also asserted a novel position. He argued that the Supreme Court’s logic in *Dred Scott* should decide the matter. The Hughes family attorney, Elias Griswold, asserted that Samuel Jackson (and, by curious implication, his own client), as a free black Marylander, was without standing before the state court, as Dred Scott had been before the federal court.⁹⁵ No black person, Griswold urged, enslaved or free, had standing to sue in the state. Jackson’s case, he concluded, must be dismissed.

Hughes provided Maryland’s high court its first opportunity to consider the implications of *Dred Scott*. Griswold suggested that, in Maryland, legal

remedies for Jackson were out of reach. His argument was not tightly woven.⁹⁶ Griswold did not rely on specific citizenship language in the Maryland state constitution. Nor did he insist that there was any necessary relationship between federal citizenship, which had been Taney's subject, and the state citizenship that might have been relevant in the *Jackson* case. Instead, Griswold made a vague but cunning cultural-legal argument that might have allowed the court to bend toward the interests of white supremacy.⁹⁷ He referred to the "opinion of Chief Justice Taney in *Dred Scott*" to support the view that if Jackson was without standing to sue, the court itself was without jurisdiction. Then, without elaboration, Griswold declared that if no law extended civil rights to black Marylanders, "the plaintiff in this case had no right to sue."⁹⁸

Jackson's attorneys, James Wallace and Charles Goldsborough, confronted the problem of *Dred Scott* directly, arguing that Maryland should take a distinct position on the question of African Americans' standing to sue and be sued. Their argument relied on an alternative view of history. Since the latter decades of the eighteenth century, Jackson's attorneys explained, African Americans "going at large and acting as free" had been viewed as free men.⁹⁹ They had, when the Constitution was ratified, given evidence in court and performed other acts, such as voting, that only subsequently had been reserved to white men. The free African American occupied an "anomalous position, having more rights than a stranger, yet not the same as an heir. He can sue and be sued in our courts, hold property and enjoy the fullest protection of our laws."¹⁰⁰ Jackson's counsel carefully distinguished the United States citizenship that was the subject of *Dred Scott* from citizenship in the state of Maryland, arguing that even if Jackson was disqualified under the federal Constitution, "he might still be a citizen of a State, and as such a free man."¹⁰¹

Hughes presented a matter of first impression for the Maryland Court of Appeals, while also positioning state court judges to assess Taney's ideas. Had Maryland's high court adopted the chief justice's views on race and rights, it would have been little surprise.¹⁰² Legrand surely understood Taney's position. The two had a great deal in common. Both were raised in slaveholding households.¹⁰³ Both had practiced law in Baltimore before entering public service.¹⁰⁴ Taney had served as Maryland's attorney general, and Legrand had held the office of secretary of state.¹⁰⁵ The two were also active lay leaders in the city's Catholic Church.¹⁰⁶ Both men were moderate proslavery voices whose ideas reflected a paternalism that was characteristic of Maryland's pro-colonization white elites.¹⁰⁷

On the rights of black people in legal culture, however, Legrand and Taney parted ways. Despite his general admiration for Taney and their shared cultural sensibilities, Legrand rejected the chief justice's reasoning and unequivocally refused to extend *Dred Scott* into the state of Maryland.¹⁰⁸ Samuel Jackson was entitled to bring suit in the state's courts, explained Legrand writing for the court.¹⁰⁹ In Maryland, there were only two instances in which black people were presumed, by their color, to stand apart from white Americans in

legal culture. Blackness barred African Americans from testifying as witnesses against white people, and in freedom suits blackness raised the rebuttable presumption that they were slaves.¹¹⁰ Otherwise, black Marylanders enjoyed a broad right to sue and be sued.¹¹¹ The court addressed the relevance of *Dred Scott* through Taney's own approach – a history of race and rights. "From the earliest history of the colony," Legrand explained, "free negroes have been allowed to sue in our courts and to hold property, both real and personal, and at one time, they having the necessary qualifications, were permitted to exercise the elective franchise."¹¹² In Justice Legrand's view, race had never served as an absolute bar to rights in Maryland. This was consistent, he said, with the state's interests: "To deny to them the right of suing and being sued, would be in point of fact to deprive them of the means of defending their possessions, and this, too, without subserving any good purpose . . . Neither the policy of our law, nor the well-being of this part of our population, demands the principle of exclusion contended for by the appellant."¹¹³

Legrand looked ahead and suggested that "so long as free negroes remain in our midst a wholesome system induces incentives to thrift and respectability, and none more effective could be suggested than the protection of their earnings."¹¹⁴ Maryland's high court rejected Taney's view of both the history and the status of free black Americans. Legrand laid out for black Marylanders a bundle of rights.¹¹⁵ It was an imperfect, partial, but still potent bundle of rights: to sue and be sued, to hold property real and personal, to defend possessions and earnings, and in some cases to vote.¹¹⁶ Justice Legrand concluded by affirming the lower court judgment, entitling Samuel Jackson to his \$750.

Court decisions – even those decided by high courts, like *Hughes v. Jackson* – did not settle matters in Baltimore. If George Hackett had followed that case, his attention did not linger. In the state capital, the same radical colonization that had inspired Octavius Taney nearly thirty years earlier was being revived. Maryland was caught up in an "anti-free Negro" wave that was sweeping much of the South. Lawmakers in Annapolis renewed efforts to set in place some of the most restrictive black laws the state had ever contemplated. Curtis Jacobs, head of the failed effort to regulate free black Marylanders in the 1851 state constitution, led the campaign as chair of the Committee on the Colored Population. The proposed legislation resurrected old ideas, including prohibiting manumission, imposing a registration requirement, and developing plans for the removal of all free black Marylanders from the state.

Jacobs shared with the Maryland Hall of Delegates a history of race and rights that supported his radical colonizationist position. He demanded, for example, atonement for the "horrid murder" of Edward Gorsuch at Christiana. Enslaved people had been "happy and contented . . . before our free negroes had become so numerous," he claimed. "This government," Jacobs explained, "was made exclusively for the benefit of the white population." Free black people were at the root of slave uprisings, from "the bloody massacre of the

whites by the slaves on the Island of Hayti” to the “sad event at Harper’s Ferry [when] John Brown so foolishly supposed the slaves of Virginia were . . . anxious to be free.”¹¹⁷

Jacobs insisted that, by law, white Marylanders had the “right to re-enslave our free negro population.” He then recounted the state’s history of black laws from 1831 to 1858, which demonstrated that the freedom of black Marylanders was “only nominal and sheer mockery, and that it in no sense confers any of the attributes or rights of citizenship.” He reviewed the support for colonization, which dated back to the 1830s. He drew on the decision in *Dred Scott*, promoting it while never remarking on *Hughes v. Jackson*. Finally, he acknowledged that manumission was the prerogative of slaveholders, but said such acts merely transferred ownership to the state, which could dispose of nominally freed people as it deemed fit.¹¹⁸

The Jacobs bill set off alarms in black Baltimore. The *Sun* employed understatement when it commented that the bill’s “novelty, if nothing else, will no doubt attract considerable interest and elicit no little comment and discussion.”¹¹⁹ A writer to the *Weekly Anglo-African* was more direct: “The Maryland bill far excels any I have seen for severity. The idea of selling convicts, old persons, etc., as well as our church property, is very severe.”¹²⁰ No number of claims enacted in the everyday sense would guarantee defeat of the proposed legislation. Hackett rethought the strategy that had guided Baltimore’s black community through the preceding decades. It was, he concluded, time to organize on a grander scale, bringing the sentiments of black Baltimoreans together with those of their white allies.¹²¹ Petitions were drawn up calling for defeat of the legislation, and hundreds came out to affix their signatures. Dissent came from many corners, including in news commentary. Southern Maryland’s *Somerset Union* remarked: “We fear that his (Mr. Jacobs’) zeal for the cause he has overshot the mark, and that his ultra position is better calculated to retard than advance the end which he, in common with the large majority of citizens in this part of Maryland, desires to see consummated.”¹²²

Hackett left Baltimore, petitions in hand, for a visit to the state capital of Annapolis. There, he confronted Curtis Jacobs, and at least one chronicler reports that two had a brief brawl on the statehouse lawn. The story of their encounter, told by librarian and book collector Daniel Murray, survives in Murray’s handwritten notes. Murray planned to publish an encyclopedia of black history, but it never came to fruition.¹²³ His draft entries appear to have been compiled out of published works, interviews, and his own personal recollections. Murray was also a Baltimorean, born in 1852, which meant he would have been old enough to have met Hackett and his family. He recorded this version of the confrontation in Annapolis between Hackett and Jacobs:

[Hackett] at once got up a petition to urge the Legislature to reject the monstrous proposition of Mr. Jacobs, which was freely signed by both white and colored residents of Balto. and to Annapolis Mr. Hackett carried it. He proceeded to the door of the

Legislative Chamber, and his presence being made known to Mr. Jacobs he at once confronted Mr. Hackett and with violent gestures inquired, how dare he a negro bring a petition to the Legislature in opposition to a bill proposed by a white member? And without more ado lurches a blow at Mr. Hackett, who having with him a stout cane belaboured Mr. Jacobs good and hard ere they were separate.¹²⁴

Murray's story is likely at least partly apocryphal. It is more probable that the two met to debate the matter. When Hackett was through at the capital, the Jacobs bill had been so modified that it could be regarded as watered down, a credit to Hackett's organizing efforts and the support of white allies. Hackett had once again cloaked himself in the garb of one who had an unqualified right to do so.

Like many legislative victories, the outcome of the Jacobs bill struggle did not warrant celebration. Hackett and the thousands who had joined him on paper had succeeded in petitioning the legislature, but it was a qualified success. It was another chapter in what black Baltimoreans like Hezekiah Grice termed their "Dred Scott," the struggle over race and rights that Grice and his Legal Rights Association marked as beginning in the 1830s. It stood for a Supreme Court case that had symbolic meaning but little material effect. Roger Taney's reasoning was tested in many states, Maryland among them, and many jurists avoided its most strict application, finding black Americans to hold rights in a qualified sense. The Maryland Court of Appeals rejected the view that the state should bar free black men and women from its halls of justice. Chief Justice John Carroll Legrand affirmed a set of rights that were not equivalent to citizenship but did include the right to sue and be sued. This possibility alone had long given free black Marylanders an opening through which to construct their well-being and belonging.

Epilogue

Monuments to Men

Today Baltimore's courthouse sits in the very place that all the city's courthouses have occupied. As far back as the era of the American Revolution, law and the social world have collided in that exact location. The modest courthouse of Roger Taney's era remained standing until the end of the nineteenth century. Its proceedings, however, were transformed by the Civil War and emancipation, when new state and federal constitutions rewrote the fundamental terms of race and law. Black Baltimoreans continued to steadily stream to that building off Monument Square, but with new claims at their disposal.

The courthouse was once again changed with the rise of Jim Crow. A place for the enactment of interracial democracy became a battleground, testing the power of the Reconstruction era's civil rights acts. By the 1890s the antebellum past was being razed. A new building with a grand scale and even grander pretensions replaced the nineteenth century's modest structure. This edifice did not easily welcome rights claims. But nearby, a new icon of legal culture was born. He was a man who spoke to issues of race and law with all the force and conviction that had characterized Roger Taney, though with another valence altogether. Thurgood Marshall was born in Baltimore in 1908, and in his hometown's courthouse he advocated a new order – desegregation – cutting his teeth, honing his skills, and laying the groundwork for a radical reordering of the relationship of race to rights.

It would be another seventy-five years before Thurgood Marshall would wholly remake the courthouse as artifact of memory. In 1985, the 1890s' edifice to Jim Crow justice was renamed. Its rededication as the Clarence M. Mitchell, Jr. Courthouse was a powerful gesture of both remembering and forgetting. Mitchell was a peer to Marshall and had served as lobbyist for the National Association for the Advancement of Colored People (NAACP) for nearly thirty years. Bearing his name, the courthouse became both a tribute to and an emblem of the civil rights era's vision of race and justice. But what did

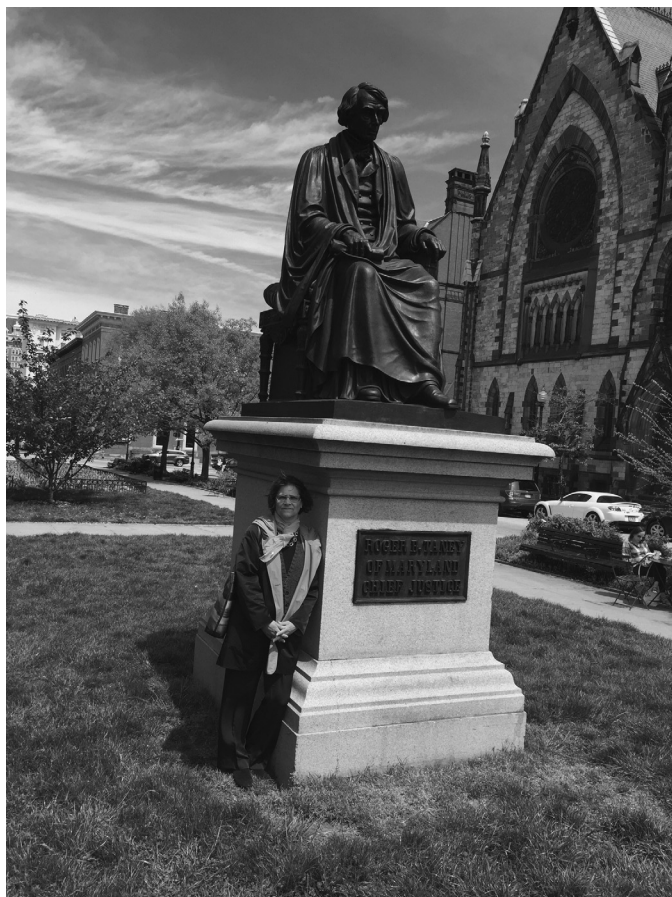


FIGURE E.1 Former site of Chief Justice Roger B. Taney monument. In 2017 Chief Justice Roger B. Taney's figure was removed from many of its pedestals in Maryland amid challenges to the pro-Confederate and pro-white supremacy views he was said to stand for. Local residents remade this site in Baltimore's Mount Vernon neighborhood by placing an empty chair where the Taney figure once sat. The city's other monuments to Taney, two of which are in the local courthouse, have remained. Image courtesy of Martha S. Jones.

the same gesture erase? Is it possible to see through Mitchell's name to a past less sanguine?

These days, I follow the daily goings-on in Baltimore with a special eye on the courthouse. Commentators most often lament its dilapidated state – leaks, vermin, and crumbling plaster. Hardly a gleaming monument to civil rights, but a monument nonetheless. On my first visit to the courthouse, I was in a hurry. I was headed to the Bar Library of Baltimore, to review bound volumes

of nineteenth-century treatises and court opinions. I spied the sole public entrance, on Monument Square, then mounted the steps, already anticipating the metal detectors and security pat down. Almost inside, I heard a curious call. It wasn't my name. The voice wasn't one I knew. Still, it was oddly familiar – familiar enough that I paused just a moment to glance back. It was auction day.

The organized, determined actions of creditors still animate proceedings at the Baltimore courthouse. And those creditors still appear to be aiming to gain possession of the only assets held by many African American families, their homes. Since January 2008, when Baltimore charged Wells Fargo Bank with predatory lending, the story of how banks have targeted the city's minority communities with unfair lending practices has become well known. Maryland's attorney general leveled charges against illegal "foreclosure practices, including the 'robo-signing' of affidavits and other required documents." The state's high court echoed the attorney general's concerns, issuing an "emergency" rule that explicitly "allows circuit courts to appoint independent lawyers to review foreclosure documents for problems."¹

The mortgage crisis that began in 2008 continues to play out on the steps of the city courthouse. On that fall afternoon, heeding Joseph Roach's admonition that scholars should spend more time in the streets, I stopped to watch.² The drama had begun offstage, with notices published in local newspapers and on the internet. Now, on the noticed day and time, the auctioneer had positioned himself at the top of the steps. At his feet at were red milk crates filled with files. He cradled a clipboard stacked with documents. He shuffled the paperwork and conferred quietly with another man. It was the sheriff. At some moments there was a small crowd gathered. Other times, there were only an interested few. Now I understood his purpose, even if I could not make out his exact words. I heard the auctioneer's staccato words strung together in a distinct cadence. Then a pause signaled the single-word refrain and his open palm slapped the clipboard: "Sold." Homes are for sale on the courthouse steps. Insolvent debtors – today, as defaulted mortgage holders – can watch as their homes are sold to the highest bidder. Underlying this scene are rights, including the right to make contracts and to sue and be sued. In this haunting performance, the city courthouse is again, as it was in the nineteenth century, a stage for complex dramas of race and law.

Inside the courthouse, I headed upstairs. I knew I was on Roger Taney's turf. Both Taney's home and the federal courthouse, where he sat on the US Circuit Court, were just one block from Monument Square.

It still is possible to walk Taney's streets, but only with a good dose of imagination. Some of the place names have changed, and the layout has too. Not the slightest of those changes is, of course, the courthouse itself. The buildings of Taney's era were long ago razed, including the former Masonic Hall where he presided over the federal Circuit Court. Where once stood the Taney home, on the northeast corner of Saint Paul and Lexington Streets, is today the Courtside Building, erected in 1918 as the Wolf Building, housing a law firm of the same

name. Perhaps the only vista that remains the same as in Taney's era is that of the column of the war memorial that marks Monument Square.

What is there left of Taney, and of an era in which courthouse auctions disposed of the bodies as well as the homes of black Americans? Visit the Baltimore courthouse and you will be struck by how it embraces and honors its history. A courtroom space on the building's first floor was set aside in 1984 as a museum, governed by the Baltimore Courthouse and Law Museum Foundation. Each weekday between noon and one, visitors can study the history of the courthouse and the city's legal culture. Volunteer attorneys serve as docents. The courthouse also boasts of its prominent portraiture. Nearly every courtroom and many corridors are appointed with the oil likenesses of the city's legal luminaries from across more than two centuries.

On my first visit, I prowled the courthouse halls and courtrooms looking for traces of its early nineteenth-century history. I would have to make my way to the top floor, methodically combing through the building, before I would find him. Taney might not mind that visitors need to ascend to the building's uppermost floors to encounter his memory. Floors six and seven include vaulted ceilings and a domed roof that today, after renovations in the 1950s did away with the structure's ground-floor atrium, are some of the building's grandest features. And there, Taney still presides in the building as a figure accorded prominence and respect. I had heard tell of the Baltimore Bar Library well before I finally visited the courthouse's sixth floor.

The city's lawyers had banded together in 1840 to create the library, which had its first home in the courthouse that stood in this location from 1808 to 1895. Commentators complained about its cramped, poorly appointed rooms, but it was a shared meeting place for the city's legal elite and made resources such as case reporters and legal treatises more broadly available. The library overlooked Taney's home, it was said, though not by design. For historians today, the library holds tremendous allure because it is intact. The library's collection from the nineteenth century has been preserved, set aside in a "historical" section, and researchers can browse the stacks much as nineteenth-century local attorneys once did. Some lawyers donated their personal libraries to the institution at the end of their career. Their book labels and handwritten names are scattered throughout the collection. Here I hoped to see the antebellum world from the perspective of the city's practitioners.³

I had not expected to find Taney there (even though I would have welcomed the discovery of his books). But as I pushed open the library doors, there he was, the first to greet me even before the staff had time to rise from their desks. Taney's portrait is an imposing one. Completed during his lifetime by the artist Miner Kilbourne Kellogg, it depicts the chief justice at rest in an armchair, quill in one hand and paper under the other. A case reporter on the table just within reach, Taney is set in an elegant frame of silk drapes, classical columns, and heavy oak furniture. He gazes beyond the frame in studied concentration.

How should historians of race and law interpret the Bar Library, as an archive? I was welcomed there. As a member of the guild, the director assured me, lest I had forgotten, I am an honorary member of the library. I admired the ornate vaulted ceilings, long and wide reading tables, and green-shaded reading lamps. There was not a computer terminal in sight. I was invited to visit the “Moose Room” in which is prominently displayed the head of said moose. There is a story to go with it, about competing law firms and a bet: the winner got the head. Then I made my way back to the historical room, and I had the run of the place. I rummaged and rifled in the open stacks with no one peering over my shoulder. I began to piece together the libraries of men I had read about in the courthouse archives. Is there anything more alluring than having free rein in an archive, the run of the stacks, and the sort of privacy that lets you just sit right there on the floor and read?

But the portrait of Taney haunted me. I avoided taking it in when I stepped out to make a phone call or get something to eat. I could not reconcile how, despite the gracious accommodation that was extended to me, I wasn't sure I belonged. Or did I mean my research topic did not belong? Could I discover here a history of race and law that sought to displace Roger Taney with Cornelius Thompson or George Hackett, one that sought to displace *Dred Scott* with deliberations in the local courthouse? What part of my work was intended to grapple with this scene? What tools did I have that might permit me to explain how I expected to dethrone Taney in the very place in which he still presided?

My last stop on that day was a courtroom at the other end of the hall. It was the city's Circuit Court, a largely commercial, big-money part of the courthouse. It is the grandest courtroom in the building, with a domed ceiling inscribed with the names of the city's legal forebears. I craned my neck searching for it: there was Taney, his name emblazoned in plaster. I had expected I might find him here. And I took a seat at the back, thinking I would quietly observe and reflect on all I had seen that day. But it was, as I said, a court set aside for resolving commercial disputes, with a trial under way. And while it is a public space, it is not unusual for the court to wonder about who visitors might be. Mostly, in my experience, they want to be mindful about reporters.

Judge Wanda Heard eyeballed me from the bench and then beckoned her clerk, whispering in his ear. He made his way over to me and asked my business. I am a historian, I explained, writing a history of the early courthouse. I was just there to observe, I said, and handed over my card. Some minutes passed before Judge Heard paused the proceedings just long enough to go off the record and speak directly to me: “Wait for the break. I'd like to talk with you.” It didn't come as an order exactly, but I knew I needed to stay. And I did. It turned out that Heard herself is deeply interested in the courthouse and its history. I explained my project, and she presented me with a brief written history of her courtroom. The marble, I learned, had come from the Vatican quarry. We talked about the courthouse museum, the portraiture, and the library.

I explained more about my history of race and rights. We mentioned Taney, and Heard, who is African American, chuckled, pointing to his name up above her head on the ridge of the courtroom's dome. I didn't tell her about the awkwardness that the chief justice's portrait had generated in me. It turns out I didn't have to.

"My courtroom is haunted," said Judge Heard. Now, I am no believer in ghosts, but she is a judge and I was a researcher looking for clues. There had been, over the years, a series of inexplicable incidents in her courtroom, Heard explained. She had experienced them, and so had her clerks. Members of the bar were ready to confirm that something was not right, up there on the sixth floor. Some sort of spirit or force or energy was making itself felt. Broken glass and cold chills were examples of what regulars called the courtroom's ghost. It was, Judge Heard believed, Roger Taney. The chief justice, whose name and likeness were so prominently on display, was unsettled. "He might have a little bit of a problem with me presiding," Heard once told a reporter for the *Sun*.⁴ Her ancestors, she explained, had been slaves.

We do not need to be believers in ghosts to appreciate Judge Heard's story. Whether discomfort with her presence is felt by the dead or also by the living, her story underscores the degree to which questions haunt a black woman, the descendant of slaves, when she presides in the Baltimore courthouse. Those who challenge her authority may be spirits from the past; they may be twenty-first-century men and women. What is certain is how race still animates that place where the city's courthouse has sat for more than two centuries. Justice Taney, be he ghost or icon, remains a force in Baltimore even today.